

Freedom of Information Act 1982

No. 3 of 1982

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Freedom of Information Act 1982

No. 3 of 1982

An Act to give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies

[Assented to 9 March 1982]

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

PART I—PRELIMINARY

Short title

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

Commencement

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

Object

- 3. (1) The object of this Act is to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth by—
 - (a) making available to the public information about the operations of departments and public authorities and, in particular, ensuring that

- rules and practices affecting members of the public in their dealings with departments and public authorities are readily available to persons affected by those rules and practices; and
- (b) creating a general right of access to information in documentary form in the possession of Ministers, departments and public authorities, limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in sub-section (1) and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

Interpretation

- 4. (1) In this Act, unless the contrary intention appears—
- "agency" means a Department or a prescribed authority;
- "applicant" means a person who has made a request;
- "Department" means a Department of the Australian Public Service other than the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department;
- "document" includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;
- "document of an agency" or "document of the agency" means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency;
- Document Review Tribunal" means the Tribunal of that name established under Part VII;
- "enactment" means-
 - (a) an Act;
 - (b) an Ordinance of the Australian Capital Territory; or
 - (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

"exempt document" means-

- (a) a document which, by virtue of a provision of Part IV, is an exempt document;
- (b) a document in respect of which, by virtue of section 7 or regulations made in accordance with that section, an agency is exempt from the operation of this Act; or
- (c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State;
- "exempt matter" means matter the inclusion of which in a document causes the document to be an exempt document;
- "officer", in relation to an agency, includes a member of the agency or a member of the staff of the agency;
- "official document of a Minister" or "official document of the Minister" means a document in the possession of a Minister, or in the possession of the Minister concerned, as the case requires, that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his possession if he is entitled to access to the document and the document is not a document of an agency;
- "Ombudsman" means the Commonwealth Ombudsman;
- "Ordinance", in relation to the Australian Capital Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment;

"prescribed authority" means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than—
 - (i) an incorporated company or association;
 - (ii) a body that, under sub-section (2), is not to be taken to be a prescribed authority for the purposes of this Act;
 - (iii) the Australian Capital Territory House of Assembly;
 - (iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory;
 - (v) the Legislative Assembly of the Territory of Norfolk Island; or
 - (vi) a Royal Commission;
- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—
 - (i) a body established by the Governor-General or by a Minister; or

- (ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;
- (c) subject to sub-section (3), the person holding, or performing the duties of, an office established by an enactment; or
- (d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment;

"principal officer" means—

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Permanent Head of the Department; and
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in any other case—the person who constitutes that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he is present:

"request" means a request made in accordance with sub-section 15 (1);

"responsible Minister" means—

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

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

"Tribunal" means the Administrative Appeals Tribunal.

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

- (3) A person shall not be taken to be a prescribed authority—
- (a) by virtue of his holding—
 - (i) an office of member of the Australian Capital Territory House of Assembly;
 - (ii) an office of member of the Legislative Assembly of the Northern Territory or of Administrator or of Minister of the Northern Territory; or
 - (iii) an office of member of the Legislative Assembly of the Territory of Norfolk Island or of Administrator or Deputy Administrator of that Territory or an executive office created pursuant to section 12 of the Norfolk Island Act 1979; or
- (b) by virtue of his holding, or performing the duties of—
 - (i) a prescribed office;
 - (ii) an office the duties of which he performs as duties of his employment as an officer of a Department or as an officer of or under a prescribed authority;
 - (iii) an office of member of a body; or
 - (iv) an office established by an enactment for the purposes of a prescribed authority.
- (4) For the purposes of this Act, the Department of Defence shall be deemed to include—
 - (a) the Defence Force;
 - (b) the Australian Cadet Corps;
 - (c) the Naval Reserve Cadets; and
 - (d) the Air Training Corps.

Act to apply to courts in respect of administrative matters

- 5. For the purposes of this Act—
- (a) a court shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court, and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court,

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

Act to apply to certain tribunals in respect of administrative matters

- 6. For the purposes of this Act—
- (a) each tribunal, authority or body specified in Schedule 1 is deemed to be a prescribed authority;

- (b) the holder of an office pertaining to a tribunal, authority or body specified in Schedule 1, being an office established by the legislation establishing the tribunal, authority or body so specified in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department; and
- (c) a registry or other office of or under the charge of a tribunal, authority or body specified in Schedule 1, and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the tribunal, authority or body so specified as a prescribed authority,

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

Exemption of certain bodies

- 7. (1) The bodies specified in Part I of Schedule 2, and the person holding and performing the duties of the office specified in that Part, are to be deemed not to be prescribed authorities for the purposes of this Act.
- (2) The bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.
- (3) In Part II of Schedule 2, "competitive commercial activities" means activities carried on on a commercial basis in competition with persons other than governments or authorities of governments.
- (4) In Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.

PART II—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

Publication of information concerning functions and documents of agencies

- 8. (1) The responsible Minister of an agency shall—
- (a) cause to be published, as soon as practicable after the commencement of this Part but not later than 12 months after that commencement, in a form approved by the Minister administering this Act—
 - (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions;

- (ii) a statement setting out particulars of any arrangements that exist for bodies or persons outside the Commonwealth administration to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency, of any enactment or scheme;
- (iii) a statement of the categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such documents, if any, as are referred to in paragraph 12 (1) (b) or (c) and categories of documents, if any, not being documents so referred to, as are customarily made available to the public, otherwise than under this Act, free of charge upon request;
- (iv) a statement of particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency; and
- (v) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents may be directed; and
- (b) during the year commencing on 1 January next following the publication, in respect of the agency, of the statement under subparagraph (a) (i), (ii), (iii), (iv) or (v) that is the first statement published under that sub-paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.
- (2) In approving a form under sub-section (1), the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Act.
- (3) The information to be published in accordance with this section may be published by including it in the publication known as the Commonwealth Government Directory.
- (4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
- (5) Sub-section (1) applies in relation to an agency that comes into existence after the commencement of this Part as if the references in that sub-section to the commencement of this Part were references to the day on which the agency comes into existence.

Certain documents to be available for inspection and purchase

9. (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers

in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being—

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the Commonwealth administration;
- (b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act;
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme; or
- (d) documents describing the procedures to be followed in investigating breaches or evasions or possible breaches or evasions of such an enactment or of the law relating to such a scheme.

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

- (2) The principal officer of an agency shall—
- (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) not later than 12 months after the commencement of this Part, cause to be published in the *Gazette* a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and
- (c) during the year commencing on 1 January next following the publication of the statement under paragraph (b) and during each succeeding year, cause to be published in the *Gazette* statements bringing up to date the information contained in the previous statement or statements.
- (3) The principal officer is not required to comply fully with paragraph (2) (a) before the expiration of 12 months after the commencement of this Part, but shall, before that time, comply with that paragraph so far as is practicable.
- (4) This section does not require a document of the kind referred to in sub-section (1) containing exempt matter to be made available in accordance with sub-section (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with sub-section (2).

- (5) The Minister may, by writing under his hand, extend, in respect of an agency, the time specified in paragraph (2) (b) or sub-section (3) where he is satisfied, after consulting the responsible Minister of the agency, that it is reasonable to extend the time by reason of special circumstances applicable to the agency.
- (6) Where the Minister is satisfied, after consulting the responsible Minister of the agency concerned, that the form or nature of the documents to which this section applies in respect of an agency that are in existence at the commencement of this Part, or of some of those documents, is such that complete compliance with this section in respect of those documents would impose on the agency such a workload as would unreasonably divert its resources from its other operations, the first-mentioned Minister may, by writing under his hand, direct that the application of this section in respect of the agency is to be subject to such modifications as he specifies, being modifications that, in his opinion, are reasonably required by reason of the circumstances referred to in this sub-section.
- (7) The report of the Minister under section 93 in respect of a year shall include—
 - (a) particulars of any extensions of time made, or directions given, under this section by the Minister during that year; and
 - (b) a statement concerning compliance by agencies with the requirements of this section during that year.
- (8) Notwithstanding the fact that statements of the kind referred to in subsection (2) (b) in relation to documents of an agency are not required to be published at more frequent intervals than once in each year, the principal officer of the agency shall take all reasonable steps to ensure that in any case where a person is seeking to inspect or to purchase a document or documents of a particular kind, being a document of a kind or documents of kinds to which this section applies, the attention of that person will be drawn to any document of that agency of that kind that has become a document to which this section applies since that statement was so published.
- (9) Sub-sections (2) and (3) apply in relation to an agency that comes into existence after the commencement of this Part as if the references in those subsections to the commencement of this Part were references to the day on which the agency comes into existence.

Unpublished documents not to prejudice public

10. (1) If a document required to be made available in accordance with section 9, being a document containing a rule, guideline or practice relating to a function of an agency, was not made available, or was not included in a statement in the *Gazette*, as referred to in that section, before the time at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that

person, if he was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

- (2) The reference in sub-section (1) to the time at which a person did, or omitted to do, any act or thing relevant to the performance in relation to him of a function of an agency does not include a reference to a time earlier than—
 - (a) the expiration of the period of 12 months referred to in paragraph 9 (2) (b) or, if that period has been extended in respect of the agency under sub-section 9 (5), the expiration of the period as extended; or
 - (b) the expiration of the period of 12 months after the day on which the agency came into existence,

whichever is the later.

PART III—ACCESS TO DOCUMENTS

Right of access

- 11. Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to—
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.

Part not to apply to certain documents

- 12. (1) A person is not entitled to obtain access under this Part to—
- (a) a document, or a copy of a document, to which sub-section 32 (1) of the Archives Act 1982 applies;
- (b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or
- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.
- (2) A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of an agency or an official document of a Minister before the date of commencement of this Part unless—
 - (a) the document or that part of the document contains information relating to the personal affairs of that person and the document became a document of the agency or an official document of the Minister not earlier than 5 years before the date of commencement of this Part: or
 - (b) the document or that part of the document is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which that person has lawfully had access.

- (3) Regulations may be made for the modification of sub-section (2) so as to enable a person to obtain access under this Part to documents to which, but for the making of those regulations, he would not be entitled to access under this Part by reason of that sub-section.
- (4) References in sub-section (3) to sub-section (2) shall be construed as including references to sub-section (2) as previously modified in pursuance of regulations made under sub-section (3).

Documents in certain institutions

- 13. (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being—
 - (a) in the memorial collection within the meaning of the Australian War Memorial Act 1980;
 - (b) in the collection of library material maintained by the National Library of Australia;
 - (c) material included in the historical material in the possession of the Museum of Australia; or
 - (d) in the custody of the Australian Archives (otherwise than as a document relating to the administration of the Australian Archives),

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

- (2) For the purposes of this Act, a document that has been placed in the custody of the Australian Archives, or in a collection referred to in sub-section (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.
- (3) Notwithstanding sub-sections (1) and (2), records of a Royal Commission that are in the custody of the Australian Archives shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Department administered by the Minister administering the Royal Commissions Act 1902.
- (4) Nothing in this Act affects the provision of access to documents by the Australian Archives in accordance with the Archives Act 1982.

Access to documents apart from Act

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

Requests for access

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

- (2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.
 - (3) Where a person—
 - (a) wishes to make a request to an agency; or
 - (b) has made to an agency a request that does not comply with this section,

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

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

Transfer of requests

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

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

- (2) Where a request is made to an agency for access to a document that—
- (a) originated with, or has been received from, a body which, or person who, is not an agency but would be an agency but for section 7, or regulations made under that section; and
- (b) is more closely connected with the functions of that body or person than with those of the agency to which the request is made,

the request shall be transferred to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed.

- (3) Where a request is made to an agency for access to a document that—
- (a) originated in, or has been received from, another agency; and
- (b) is more closely connected with functions of the other agency in respect of which the other agency is exempt from the operation of this Act than with the functions of the agency to which the request is made,

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

(4) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.

- (5) Where a request is transferred to an agency in accordance with this section, it shall be deemed to be a request made to that agency and received at the time at which it was originally received.
 - (6) In this section, "agency" includes a Minister.

Requests involving use of computers, &c.

- 17. (1) Where—
- (a) a request (including a request of the kind described in sub-section 24 (1)) is made in writing and in accordance with the requirements of subsection 15 (2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and
- (c) the agency could produce a written document containing the information in discrete form by—
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency,

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

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

Access to documents to be given on request

- 18. (1) Subject to this Act, where—
- (a) a request is made in writing and in accordance with the requirements of sub-section 15 (2) by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and
- (b) any charge that, under the regulations, is required to be paid before access is granted has been paid,

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

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

Time within which formal requests to be decided

- 19. (1) If a request for access to a document that is made to an agency or Minister—
 - (a) is made in writing and is expressed to be made in pursuance of this Act;

- (b) specifies an address in Australia at which notices under this Act may be sent to the person making the request; and
- (c) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address of the agency or of the Minister, as the case may be, that is, under the regulations, an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,

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

(2) The regulations may make provision that sub-section (1) is to have effect as if a specified shorter period were substituted for the period of 60 days specified in that sub-section, and a provision so made has effect in relation to requests received by or on behalf of an agency or Minister while the provision is in force.

Forms of access

- 20. (1) Access to a document may be given to a person in one or more of the following forms:
 - (a) a reasonable opportunity to inspect the document;
 - (b) provision by the agency or Minister of a copy of the document;
 - (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
 - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.
- (2) Subject to sub-section (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.
 - (3) If the giving of access in the form requested by the applicant—
 - (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his functions, as the case may be;
 - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
 - (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or a State) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department of State.

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

Deferment of access

- 21. (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned—
 - (a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published;
 - (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available —until the expiration of a reasonable period after its preparation for it to be so presented or made available;
 - (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or
 - (d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament.
- (2) Where the provision of access to a document is deferred in accordance with sub-section (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.
- (3) Sub-section 55 (1) does not apply in relation to a deferment under paragraph (1) (d) of this section.

Deletion of exempt matter

- 22. (1) Where—
- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, by reason of the deletions, be misleading; and
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy,

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

- (2) Where access is granted to a copy of a document in accordance with sub-section (1)—
 - (a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and
 - (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him a notice in writing in accordance with that section.

Decisions to be made by authorized persons

- 23. (1) Subject to sub-section (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by a person who is declared by the regulations to be the prescribed officer for the purposes of this sub-section in relation to that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him in accordance with arrangements approved by the prescribed officer in relation to that court, tribunal, authority or body.

Requests may be refused in certain cases

24. (1) Where-

- (a) a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter; and
- (b) the agency or Minister dealing with the request is satisfied that, apart from this sub-section, the work involved in giving access to all the documents to which the request relates would substantially and unreasonably divert the resources of the agency from its other operations or would interfere substantially and unreasonably with the performance by the Minister of his functions, as the case may be, having regard to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or of the office of the Minister,

the agency or Minister may refuse to grant access to the documents in accordance with the request without having caused those processes to be undertaken.

- (2) Where, in respect of a request of a kind referred to in paragraph (1) (a), it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents and that no obligation would arise under section 22 in relation to any of those documents to grant access to a copy of the document with such deletions as are referred to in that section, the agency or Minister may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document.
- (3) An agency or Minister shall not refuse to grant access to a document in accordance with a request—
 - (a) on the ground that the request does not comply with sub-section 15 (2); or
 - (b) in accordance with sub-section (1),

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

Information as to existence of certain documents

- 25. (1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be an exempt document by virtue of section 33 or sub-section 37 (1).
- (2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in sub-section (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister, as the case may be, neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be an exempt document under section 33 or sub-section 37 (1) and, where such a notice is given—
 - (a) section 26 applies as if the decision to give such a notice were a decision referred to in that section; and
 - (b) the decision shall, for the purposes of Part VI, be deemed to be a decision refusing to grant access to the document in accordance with the request for the reason that the document would, if it existed, be an exempt document under section 33 or sub-section 37 (1), as the case may be.

Reasons and other particulars of decisions to be given

26. (1) Where, in relation to a request, a decision is made under this Part refusing to grant access to a document in accordance with the request or deferring provision of access to a document, the agency or Minister concerned

shall cause the applicant to be given notice in writing of the decision, and the notice shall—

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision:
- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning his rights with respect to review of the decision and the procedure for the exercise of those rights, including (where applicable) particulars of the manner in which an application for a review under section 54 may be made.
- (2) An agency or Minister is not required to include in a notice under this section any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

Procedure on request in respect of document relating to business affairs, &c.

- 27. (1) Where-
- (a) a request is received by an agency or Minister in respect of a document containing information concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking; and
- (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 54 a decision refusing the request, that the person or organization, or the proprietor of the undertaking, referred to in paragraph (a) might reasonably wish to contend that the document is an exempt document under section 43,

a decision to grant access under this Act to the document, so far as it contains the information referred to in paragraph (a), shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 19—

- (c) the agency or Minister has given to that person or organization or the proprietor of that undertaking a reasonable opportunity of making submissions in support of a contention that the document is an exempt document under section 43; and
- (d) the person making the decision has had regard to any submissions so made.
- (2) Where, after any submissions have been made in accordance with subsection (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1) (a), is not an exempt document under section 43—
 - (a) the agency or Minister shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and

- (b) access shall not be given to the document, so far as it contains the information referred to in paragraph (1) (a), unless—
 - (i) the time for an application to the Tribunal by that person in accordance with section 59 has expired and such an application has not been made; or
 - (ii) such an application has been made and the Tribunal has confirmed the decision.

Information Access Offices

- 28. (1) The Minister administering this Act shall cause to be published, as soon as practicable after the date of commencement of this Part, but not later than 12 months after that date, a statement setting out the addresses of such offices of the Government of the Commonwealth, throughout Australia, as are to be Information Access Offices for the purposes of this section.
- (2) A person who is entitled to obtain access to a document of an agency or to an official document of a Minister shall have that access provided, if the person so requests, at the Information Access Office having appropriate facilities to provide access in the form requested that is closest to his normal place of residence.
- (3) Nothing in this section shall be taken to prevent an agency to which, or a Minister to whom, a request has been made for access to a document in a particular form from giving access to that document, in accordance with subsection 20 (3), in a form other than the form requested.
- (4) A person who is provided with access to a document at an Information Access Office shall not, by reason of the fact that the provision of access at that Office has necessitated the incurring of costs by an agency or a Minister that would not have been incurred had access been provided at another place, be required to pay any charge additional to the charge that he would have been required to pay had he been provided with access at that other place.

Persons to be notified of liability to pay charges

29. Where, in accordance with the regulations, an agency or Minister makes a decision that an applicant is liable to pay a charge in respect of a request for access to a document or in respect of the provision of access to a document, the agency or Minister shall notify the applicant, in writing, accordingly, and shall forward to the applicant, together with that notification, a statement setting out the basis on which the amount of that charge is calculated.

Charge may, in certain circumstances, be remitted in whole or in part

30. (1) An applicant may make application, in writing, to the agency to which or the Minister to whom he made a request seeking the total or partial remission of any charge paid by him, or notified to him as being a charge that he is liable to pay, in respect of that request or in respect of the provision of access to a document to which the request relates.

- (2) Where application is made to an agency or the Minister under subsection (1), the agency or Minister—
 - (a) may remit the charge to which the application relates in whole or in part; and
 - (b) shall take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 28 days after the day on which the application was received by or on behalf of the agency or Minister.
- (3) Without limiting the matters which the agency or Minister may take into account for the purpose of determining whether or not to remit a charge under sub-section (2), the agency or Minister shall take into account—
 - (a) whether the payment of the charge or of any part of the charge would cause financial hardship to the applicant;
 - (b) whether the document to which the applicant seeks access relates to the personal affairs of the applicant; and
 - (c) whether the giving of access is in the general public interest or in the interest of a substantial section of the public.
 - (4) Where—
 - (a) an application has been made to an agency or Minister under subsection (1);
 - (b) the period of 28 days has elapsed since the day on which the application was received by or on behalf of the agency or Minister; and
 - (c) notice of a decision on the application has not been received by the applicant,

the principal officer of the agency, or the Minister, as the case requires, shall, for all purposes of this Act, be deemed to have made, on the last day of that period, a decision refusing to make the total or partial remission of the charge to which the application relates that was sought in that application.

(5) In this section, "charge" means a charge that the applicant is notified under section 29 that he is liable to pay in respect of a request for access to a document or in respect of the provision of access to a document.

Certain periods to be disregarded for the purposes of section 19

31. (1) Where an applicant receives a notification under section 29 before the day on which the period that is, for the purposes of section 19, the prescribed period in relation to the request made by him expires or, but for the operation of this sub-section, would expire, being a notification to the effect that the applicant is liable to pay a specified charge in respect of that request, there shall be disregarded, in the computation of that prescribed period, each day occurring during the period commencing on the day on which that notification is received by the applicant and ending on the day that is, under sub-section (3), the relevant day in relation to that request.

- (2) The reference in sub-section (1) to the period that is, for the purposes of section 19, the prescribed period, in relation to a request, shall be read as a reference—
 - (a) unless paragraph (b) applies—to the period of 60 days commencing on the day on which the request made under section 19 was received by or on behalf of the agency to which or the Minister to whom it was made; or
 - (b) if, by virtue of regulations under sub-section 19 (2), another period is applicable in respect of the request—to that other period.
- (3) For the purposes of sub-section (1), "relevant day", in relation to a request made by an applicant to whom a notification has been given under section 29 setting out the applicant's liability to pay a specified charge, is—
 - (a) in a case where the applicant pays the charge or such deposit on account of the charge as he is required to pay under the regulations (whether or not he first seeks a remission of the charge under section 30 or a review of the decision in respect of the charge under section 55)—the day on which that charge or that deposit is so paid;
 - (b) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), makes application under section 30 for the total or partial remission of the charge—
 - (i) if a decision is made upon that application wholly to remit the charge—the day on which the applicant is notified, in pursuance of that section, of that decision; or
 - (ii) if a decision is made upon that application partially to remit the charge—the day on which the applicant pays the charge as so remitted or such deposit on account of the charge as so remitted as he is required to pay under the regulations; or
 - (c) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), makes application to the Tribunal under section 55 for a review of the decision referred to in section 29—
 - (i) if a decision is made by the Tribunal setting aside the decision referred to in section 29—the day on which the applicant is notified by the Tribunal of that decision; or
 - (ii) if a decision is made by the Tribunal setting aside the decision referred to in section 29 and making another decision in substitution for that decision—the day on which the applicant pays the charge specified in the substituted decision or such deposit on account of that charge as he is required to pay under the regulations,

whichever day first occurs.

PART IV—EXEMPT DOCUMENTS

Interpretation

- 32. A provision of this Part by virtue of which documents referred to in the provision are exempt documents—
 - (a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents; and
 - (b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

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

- 33. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure—
 - (a) could reasonably be expected to cause damage to-
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth;
 - (iii) the international relations of the Commonwealth; or
 - (iv) relations between the Commonwealth and any State or the Northern Territory; or
 - (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country, or of a State or the Northern Territory, to the Government of the Commonwealth or a person receiving the communication on behalf of that Government.
- (2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1).
- (3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the disclosure under this Act of the last-mentioned document to be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason).

- (5) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.
- (6) A power delegated under sub-section (5), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.
- (7) A delegation under sub-section (5) does not prevent the exercise of a power by the responsible Minister.

Cabinet documents

- 34. (1) A document is an exempt document if it is—
- (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;
- (b) an official record of the Cabinet:
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
- (2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that it is an exempt document of that kind.
- (3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that, if such a document exists, it is an exempt document of that kind.
- (5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate.

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

Executive Council documents

- 35. (1) A document is an exempt document if it is—
- (a) a document that has been submitted to the Executive Council for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive Council;
- (b) an official record of the Executive Council;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or advice of the Executive Council, other than a document by which an act of the Governor-General, acting with the advice of the Executive Council, was officially published.
- (2) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that it is an exempt document of that kind.
- (3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively, subject to the operation of Part VI, that, if such a document exists, it is an exempt document of that kind.
- (5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate.

Internal working documents

- 36. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—
 - (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation

- or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth; and
- (b) would be contrary to the public interest.
- (2) In the case of a document of the kind referred to in sub-section 9 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 9 (1).
- (3) Where a Minister is satisfied, in relation to a document to which paragraph (1) (a) applies, that the disclosure of the document would be contrary to the public interest, he may sign a certificate to that effect (specifying the ground of public interest in relation to which the certificate is given) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the disclosure of that document would be contrary to the public interest.
- (4) Where a Minister is satisfied as mentioned in sub-section (3) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (5) This section does not apply to a document by reason only of purely factual material contained in the document.
 - (6) This section does not apply to—
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a prescribed body or organization established within an agency; or
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.
- (7) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 26 shall state the ground of public interest on which the decision is based.
- (8) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency.
- (9) A power delegated under sub-section (8), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister.

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

Documents affecting enforcement of the law and protection of public safety

- 37. (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
 - (c) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—
 - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (3) In sub-sections (1) and (2), "law" means law of the Commonwealth or of a State or Territory.

Documents to which secrecy provisions of enactments apply

38. A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

Documents affecting financial or property interests of the Commonwealth

39. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

Documents concerning certain operations of agencies

- 40. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that—
 - (a) the document contains information relating to—
 - (i) procedures or methods for the conduct of tests, examinations or audits by an agency; or
 - (ii) particular tests, examinations or audits conducted or to be conducted by an agency,
 - the disclosure of which would, or could reasonably be expected to, prejudice the effectiveness of those procedures or methods or the attainment of the objects of any such tests, examinations or audits;
 - (b) the document contains information the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the supervision or review of the operations of an agency for the purpose of ensuring the proper and efficient conduct of those operations; or
 - (c) the document contains information the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the staff management interests of the Commonwealth or of an agency, including the development and carrying out of the personnel management policy and the industrial relations policy of the Commonwealth or of an agency or the conduct by or on behalf of the Commonwealth or an agency of industrial relations negotiations.

Documents affecting personal privacy

- 41. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).
- (2) Subject to sub-section (3), the provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.
- (3) Where a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.

Documents subject to legal professional privilege

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

(2) A document of the kind referred to in sub-section 9 (1) is not an exempt document by virtue of sub-section (1) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 9 (1).

Documents relating to business affairs, &c.

- 43. (1) A document is an exempt document if its disclosure under this Act would disclose—
 - (a) trade secrets;
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
 - (c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information—
 - (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) The provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document—
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs;
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organization where the person making the request is the organization or a person acting on behalf of the organization.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, a State, the Northern Territory or a local government authority.

Documents affecting national economy

- 44. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it—
 - (a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government of the Commonwealth to manage the economy of Australia; or
 - (b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or class of persons, by reason of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament of the Commonwealth.
- (2) The kinds of documents to which sub-section (1) may apply include, but are not limited to, documents containing matter relating to—
 - (a) currency or exchange rates;
 - (b) interest rates;
 - (c) taxes, including duties of customs or of excise;
 - (d) the regulation or supervision of banking, insurance and other financial institutions;
 - (e) proposals for expenditure;
 - (f) foreign investment in Australia; or
 - (g) borrowings by the Commonwealth, a State or an authority of the Commonwealth or of a State.

Documents containing material obtained in confidence

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

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

- 46. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown—
 - (a) be in contempt of court;
 - (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
 - (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

Certain documents arising out of companies and securities legislation

- 47. (1) A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—
 - (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, a State or an authority of a State;

- (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of that Council was officially published;
- (c) a document furnished to the National Companies and Securities Commission by a State or an authority of a State and relating solely to the functions of the Commission in relation to the law of a State or the laws of 2 or more States; or
- (d) a document, other than a document referred to in paragraph (c), that is in the possession of the National Companies and Securities Commission and relates solely to the exercise of the functions of that Commission under a law of a State or the laws of 2 or more States.
- (2) This section has effect as if the Northern Territory were a State.

PART V—AMENDMENT OF PERSONAL RECORDS

Persons may make application for amendment of record

- 48. Where a person (in this section referred to as the "claimant") who is an Australian citizen, or whose continued presence in Australia is not subject to any limitation as to time imposed by law, claims that a document of an agency or an official document of a Minister to which access has been provided to the claimant under this Act contains information relating to his personal affairs—
 - (a) that is incomplete, incorrect, out of date or misleading; and
 - (b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose,

he may request the agency or Minister to amend the record of that information kept by the agency or Minister.

Form of request for amendment of records

- **49.** (1) A request under section 48—
- (a) shall be in writing and be expressed to be made in pursuance of this section;
- (b) shall specify an address in Australia to which a notice under this Part may be sent to the claimant; and
- (c) shall be sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address of the agency or of the Minister, as the case may be, that is an address set out in regulations made for the purposes of section 19.
- (2) A request under section 48 shall give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister is incomplete, incorrect, out of date or misleading and shall specify the amendments that the claimant wishes to be made.

Procedures upon request for amendment of records

- 50. (1) Where an agency to which or Minister to whom a request is made under section 48 decides to amend the record of information to which the request relates, the agency or Minister may, in its or his discretion, make the amendment either by altering the record or by adding an appropriate notation to the record.
- (2) Where an agency or Minister amends a record by adding a notation to the record, the notation shall—
 - (a) specify the respects in which the information is incomplete, incorrect, out of date or misleading; and
 - (b) in a case where the information is claimed to be out of date—set out such information as is required to bring the information up to date.
- (3) Where a request is made to an agency or Minister under section 48, the agency or Minister shall take all reasonable steps to enable the claimant to be notified of a decision on the request as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.
- (4) Section 23 applies in relation to a decision in respect of a request made under section 48.
- (5) Section 26 applies in relation to a decision made under this Part refusing to amend a record in like manner as it applies in relation to a decision made under Part III refusing to grant access to a document in accordance with a request made in accordance with sub-section 15 (1).

Review of requests for amendment of records

- 51. (1) A reference in Part VI to a request shall be construed as including a request under section 48 but, for the purposes of the application of that Part to or in relation to a request made under that section—
 - (a) the reference in paragraph 55 (1) (a) to a decision refusing to grant access to a document shall be read as a reference to a decision made under this Part refusing to amend a record;
 - (b) paragraph 56 (1) (a) has effect as if "in accordance with section 19" were omitted;
 - (c) paragraph 56 (1) (b) has effect as if "60 days or such other period as is applicable by virtue of regulations under sub-section 19 (2)" were omitted and "30 days" were substituted;
 - (d) the reference in sub-section 56 (1) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record;
 - (e) the reference in sub-section 56 (3) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record; and

- (f) the reference in sub-section 56 (5) to a decision to grant, without deferment, access to a document shall be read as a reference to a decision to amend a record.
- (2) Where—
- (a) an agency or Minister refuses to amend a record pursuant to a request under section 48;
- (b) the claimant makes an application to the Administrative Appeals Tribunal for a review of the decision; and
- (c) the Tribunal affirms the decision.

the claimant may, by notice in writing, require the agency or Minister to add to the record a notation—

- (d) specifying the respects in which the information is claimed by him to be incomplete, incorrect, out of date or misleading; and
- (e) in a case where the information is claimed by him to be out of date—setting out such information as is claimed to be required to bring up to date or complete the information.
- (3) Paragraph 49 (1) (c) applies to a notice under sub-section (2) in like manner as it applies in relation to a request under section 48.
 - (4) Where a notice is given to an agency or Minister under sub-section (2)—
 - (a) the agency or Minister shall ensure that a notation as required by the notice is added to the record; and
 - (b) if any information in the part of the record to which the notation relates is disclosed to a person (including another agency or Minister) by the agency or Minister, the agency or Minister shall ensure that there is also furnished to that person, with the document containing the information, a statement—
 - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading, as the case may be; and
 - (ii) giving particulars of the notation,

and may, if the agency or Minister considers it appropriate to do so, include in the statement the reasons of the agency or Minister for not amending the part of the record from which the information is taken.

Notation of records supplied before commencement of this Part

52. Nothing in this Part is intended to prevent or discourage agencies or Ministers from giving particulars of a notation added to a record in accordance with paragraph 51 (4) (a) to a person (including any agency or Minister) to whom information contained in the record to which the notation relates was furnished before the commencement of this Part.

PART VI—REVIEW OF DECISIONS

Interpretation

- 53. For the purposes of this Part, unless the contrary intention appears—
- (a) a certificate given under sub-section 33 (4), 34 (4) or 35 (4) in respect of a document as described in a request shall be deemed to be a certificate given in respect of the document so described notwithstanding that the certificate does not acknowledge the existence or non-existence of the document so described; and
- (b) a claim that a document would, if it exists, be an exempt document under section 33, 34 or 35 shall be deemed to be a claim that the document is an exempt document under that section notwithstanding that the existence or non-existence of the document is not acknowledged.

Internal review

- 54. (1) Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency, being—
 - (a) a decision in relation to the provision of access to a document that is the subject of the request; or
 - (b) a decision that the applicant is liable to pay a charge in respect of the request for access to a document or in respect of the provision of access to a document to which the request relates,

the applicant may, within 28 days after the day on which that decision is notified to him or within such further period as the principal officer of the agency allows, apply to the principal officer of the agency for a review of the decision in accordance with this section.

- (2) Subject to sub-section (3), where an application for a review of a decision is made to the principal officer in accordance with sub-section (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and make a fresh decision.
 - (3) Sub-section (1) does not apply in relation to—
 - (a) a decision made on a review under this section; or
 - (b) a decision in relation to the provision of access to a document upon a request that is, under sub-section 56 (1) or (3), to be deemed to have been given.
- (4) The provisions of section 26 extend to a decision made under this section upon a review of a decision in relation to the provision of access to a document that is the subject of a request.

Applications to Administrative Appeals Tribunal

- 55. (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for review of—
 - (a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document;

- (b) a decision refusing to allow a further period for making an application under sub-section 54 (1) for a review of a decision; or
- (c) a decision referred to in section 29.
- (2) Subject to sub-section (3), where, in relation to a decision referred to in paragraph (1) (a) or (c), a person is or has been entitled to apply under section 54 for a review of the decision, that person is not entitled to make an application under sub-section (1) in relation to that decision, but may make such an application in respect of the decision made on such a review.
- (3) Sub-section (2) does not prevent an application to the Tribunal in respect of a decision where—
 - (a) the person concerned has applied under section 54 for a review of the decision;
 - (b) a period of 14 days has elapsed since the day on which he made that application; and
 - (c) he has not been informed of the result of the review,

and such an application to the Tribunal may be treated by the Tribunal as having been made within the time allowed by sub-section (4) if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal.

- (4) Notwithstanding section 29 of the Administrative Appeals Tribunal Act 1975, the period within which (subject to any extension granted by the Tribunal) an application under sub-section (1) of this section is to be made in respect of a decision is—
 - (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant in accordance with section 26 and ending on the sixtieth day after that day;
 - (b) where the decision is a decision that is to be deemed by sub-section 56 (1) or (3) to have been made—the period commencing on the day on which the decision is to be deemed to have been made and ending on the sixtieth day after that day; or
 - (c) where sub-section 57 (4) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that sub-section and ending on the sixtieth day after that day.

Application to Tribunal where decision delayed

- 56. (1) Subject to this section, where—
- (a) a request has been made to an agency or Minister in accordance with section 19;
- (b) the period of 60 days or such other period as is applicable by virtue of regulations under sub-section 19 (2) has elapsed since the day on which the request was received by or on behalf of the agency or Minister; and

- (c) notige of a decision on the request has not been received by the applicant, the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 55, be deemed to have made, on the last day of that period, a decision refusing to grant access to the document.
- (2) Where a complaint is made to the Ombudsman under the Ombudsman Act 1976 concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the expiration of the period referred to in sub-section (1)), an application to the Tribunal under section 55 of this Act by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the Ombudsman Act 1976.
- (3) Where such a complaint is made before the expiration of the period referred to in sub-section (1), the Ombudsman, after having investigated the complaint, may, if he is of the opinion that there has been unreasonable delay by an agency in connection with the request, grant to the applicant a certificate certifying that he is of that opinion, and, if the Ombudsman does so, the principal officer of the agency or the Minister, as the case requires, shall, for the purpose of enabling application to be made to the Tribunal under section 55, be deemed to have made, on the day on which the certificate is granted, a decision refusing to grant access to the document.
- (4) The Ombudsman shall not grant a certificate under sub-section (3) where the request to which the complaint relates was made to, or has been referred to, a Minister and is awaiting decision by him.
- (5) Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally dealt with the application, a decision, other than a decision to grant, without deferment, access to the document in accordance with the request, is given, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.
- (6) Before dealing further with an application made by virtue of this section, the Tribunal may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the request.

Complaints to Ombudsman

- 57. (1) Notwithstanding anything contained in this Act or in sub-section 6 (3) of the *Ombudsman Act* 1976 but subject to sub-section 6 (2) of that Act, the exercise of the powers of the Ombudsman under the *Ombudsman Act* 1976 in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal.
- (2) For the purposes of the *Ombudsman Act* 1976, action taken by an agency in respect of a request made to the agency is declared to be action taken by the agency in relation to a matter of administration.

- (3) The reference in sub-section (2) to action taken by an agency shall be read as a reference to all such action as would, for the purposes of the *Ombudsman Act* 1976, be treated as being action taken by the Department or body constituting the agency.
- (4) Where a complaint is made to the Ombudsman under the Ombudsman Act 1976 concerning a decision under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the Ombudsman Act 1976.
- (5) Notwithstanding anything contained in the Ombudsman Act 1976, a report under that Act to a complainant in respect of a complaint arising out of a request under this Act shall not contain information of the kind referred to in sub-section 25 (1) of this Act.

Powers of Tribunal

- 58. (1) Subject to sub-section (2), in proceedings under this Part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister.
- (2) Where, in proceedings under this section, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.
- (3) Where there is in force in respect of a document that is claimed to be an exempt document under section 33, 34, 35 or 36 a certificate under that section, the powers of the Tribunal do not extend to reviewing the decision to give the certificate.
- (4) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 33, 34 or 35 and in respect of which a certificate is in force under that section, the Tribunal shall, if the applicant so requests, refer to the Document Review Tribunal the question whether there exist reasonable grounds for that claim to be made.
- (5) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 36 and in respect of which a certificate is in force under that section, the Tribunal shall, in a case where it is satisfied that the document is a document to which paragraph 36 (1) (a) applies, if the applicant so requests, refer to the Document Review Tribunal the question whether there exist reasonable grounds for the claim that the disclosure of the document would be contrary to the public interest.

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

Review of certain decisions in respect of documents relating to business affairs, &c.

- 59. (1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 43 has been given, in accordance with sub-section 27 (2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.
 - (2) Where an application is made in accordance with sub-section (1)—
 - (a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
 - (b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.
 - (3) Where—
 - (a) upon a request referred to in sub-section 27 (1), a decision is made, after the making of submissions by a person in accordance with that sub-section, not to grant access to the document to which the request relates, so far as it contains the information referred to in paragraph 27 (1) (a); and
- (b) an application is made to the Tribunal for a review of the decision, the agency or Minister concerned shall forthwith inform the person who made the submissions of the application.

Parties

- 60. For the purposes of this Part and of the application of the Administrative Appeals Tribunal Act 1975 in respect of proceedings under this Part—
 - (a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and
 - (b) in the case of proceedings by virtue of section 56, the agency or Minister to which or to whom the request was made shall be a party to the proceedings.

Onus

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

Application of section 28 of Administrative Appeals Tribunal Act

62. Where, in relation to a decision in respect of a request, the applicant has been given a notice in writing complying with section 26, section 28 of the Administrative Appeals Tribunal Act 1975 does not apply to that decision.

Tribunal to ensure non-disclosure of certain matters

- 63. (1) In proceedings under this Part, the Tribunal shall make such order or orders under sub-section 35 (2) of the Administrative Appeals Tribunal Act 1975 as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of—
 - (a) exempt matter contained in a document to which the proceedings relate; or
 - (b) information of the kind referred to in sub-section 25 (1).
- (2) Notwithstanding anything contained in the Administrative Appeals Tribunal Act 1975—
 - (a) the Tribunal shall not, in its reasons for a decision in a matter arising under this Act, include any matter or information of a kind referred to in sub-section (1); and
 - (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his representative where it is necessary to do so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in sub-section (1).

Production of exempt documents

- 64. (1) Where there are proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, section 37 of the Administrative Appeals Tribunal Act 1975 does not apply in relation to the document but if the Tribunal is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt document it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt document, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.
- (2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, the Tribunal shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

- (3) Notwithstanding sub-sections (1) and (2) but subject to sub-section (4), the Tribunal is not empowered, in any proceedings, to require—
 - (a) the production of a document in respect of which there is in force a certificate under section 33, 34, 35 or 36; or
 - (b) the giving of information in respect of which a certificate is in force under sub-section 33 (4).
- (4) Where a certificate of a kind referred to in paragraph (3) (a) identifies a part or parts of the document concerned in the manner provided in sub-section 33 (3), 34 (3), 35 (3) or 36 (4), sub-section (3) does not prevent the Tribunal from requiring the production, in proceedings before the Tribunal under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.
- (5) Sub-sections (1) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those sub-sections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.
- (6) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section to be sent to the Federal Court of Australia in accordance with section 46 of the Administrative Appeals Tribunal Act 1975, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff of the Court in the course of the performance of his duties as a member of that staff.

Evidence of certificates

65. In proceedings before the Tribunal under this Part, evidence of a certificate under section 33, 34, 35 or 36, including evidence of the identity or nature of a document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of a document to which it relates.

Referral of questions to Document Review Tribunal

66. (1) Where, in pursuance of sub-section 58 (4) or (5), the Administrative Appeals Tribunal refers a question to the Document Review Tribunal, the Registrar of the Administrative Appeals Tribunal shall, notwithstanding section 64, for the purpose of enabling the Document Review Tribunal to consider the question referred to it, cause such of the documents lodged with the Administrative Appeals Tribunal as are relevant to the determination of that question to be forwarded to the Registrar of the Document Review Tribunal.

- (2) Where, in relation to a document that is claimed to be an exempt document under section 33, 34 or 35 and in respect of which a certificate is in force under that section, there is referred to the Document Review Tribunal the question whether there exist reasonable grounds for that claim, the existence of the certificate does not prevent the Document Review Tribunal from considering that question.
- (3) Where, in relation to a document that is claimed to be an exempt document under section 36 and in respect of which a certificate is in force under that section, there is referred to the Document Review Tribunal the question whether there exist reasonable grounds for the claim that the disclosure of the document would be contrary to the public interest, the existence of the certificate does not prevent the Document Review Tribunal from considering that question.

Consideration by Document Review Tribunal of questions referred under section 58

- 67. (1) Where, in respect of a document that is claimed to be an exempt document under section 33, 34 or 35, there has been referred to the Document Review Tribunal under sub-section 58 (4) the question whether there exist reasonable grounds for the claim that the document is an exempt document under that section, the Document Review Tribunal shall, after consideration of the evidence and other material put before it in relation to that question, decide whether, in its opinion, there exist reasonable grounds for that claim.
- (2) Where, in respect of a document that is claimed to be an exempt document under section 36, there has been referred to the Document Review Tribunal under sub-section 58 (5) the question whether there exist reasonable grounds for the claim that the disclosure of the document would be contrary to the public interest, the Document Review Tribunal shall, after consideration of the evidence and other material put before it in relation to that question, decide whether, in its opinion, there exist reasonable grounds for the last-mentioned claim.
 - (3) Where the appropriate Minister decides—
 - (a) in the case of a document that is claimed to be an exempt document under section 33, 34 or 35 and in respect of which the Document Review Tribunal has made a decision of the kind referred to in sub-section (1)—after having regard to that decision; or
 - (b) in the case of a document that is claimed to be an exempt document under section 36 and in respect of which the Document Review Tribunal has made a decision of the kind referred to in sub-section (2)—after having regard to that decision,

that the claim that the document is an exempt document under that section will be withdrawn, he shall forthwith, by writing under his hand—

(c) revoke the certificate in force under that section in respect of the document; and

- (d) inform the person who requested access to the document and the Administrative Appeals Tribunal that he has so revoked the certificate, and, upon his so revoking the certificate, the claim that the document is an exempt document under that section shall be deemed, for all purposes of this Act, to have been withdrawn.
- (4) Nothing in sub-section (3) shall be taken to imply that a certificate given in respect of a document under section 33, 34, 35 or 36 may not be revoked otherwise than in accordance with sub-section (3).
- (5) For the purposes of this section, "appropriate Minister", in relation to a document in respect of which a certificate is in force under section 33, 34, 35 or 36 means—
 - (a) where that certificate is in force under section 33 or 36—the Minister who gave, or whose delegate gave, the certificate; or
 - (b) where that certificate is in force under section 34 or 35—the Prime Minister.

Production of exempt documents to the Document Review Tribunal

- 68. (1) In any proceedings before the Document Review Tribunal under this Act in relation to a document in respect of which there is in force a certificate under section 33, 34, 35 or 36, the Document Review Tribunal is entitled to require the production of the document only in accordance with this section.
- (2) Where, in relation to a document that is claimed to be an exempt document under section 33, 34 or 35, and in respect of which there is in force a certificate under that section, the Document Review Tribunal is not satisfied, by evidence on affidavit or otherwise, that there exist reasonable grounds for that claim to be made, it may require the document to be produced for inspection by the person or persons constituting the Tribunal for the purposes of the proceeding only.
- (3) Where, in relation to a document that is claimed to be an exempt document under section 36 and in respect of which a certificate is in force under that section, the Document Review Tribunal is not satisfied, by evidence on affidavit or otherwise, that there exist reasonable grounds for the claim that the disclosure of the document would be contrary to the public interest, the Document Review Tribunal may require the document to be produced for inspection by the person or persons constituting the Tribunal for the purposes of the proceeding only.
- (4) After the inspection the Document Review Tribunal shall return the document to the person by whom it was produced without permitting any person other than the person or persons constituting the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the documents or disclosing the contents of the document to any person.

Return of material to the Administrative Appeals Tribunal

69. After the Document Review Tribunal has given its decision on the question or questions referred to it under section 58, the Registrar of the Document Review Tribunal shall cause such documents as were forwarded to him by the Administrative Appeals Tribunal for the purpose of enabling the consideration of that question or those questions to be returned to the Registrar of the Administrative Appeals Tribunal together with a copy of the decision of the Document Review Tribunal on the question or on each of the questions so referred.

PART VII—ESTABLISHMENT AND PROCEDURE OF DOCUMENT REVIEW TRIBUNAL

Interpretation

- 70. In this Part, unless the contrary intention appears—
- "Document Review Tribunal" includes a member or members exercising the powers of the Document Review Tribunal;
- "member" means a member of the Document Review Tribunal;
- "President" means the President of the Document Review Tribunal.

Establishment of Tribunal

- 71. (1) There is hereby established a Document Review Tribunal, which shall consist of a President and such number of other members as are appointed in accordance with this Part.
 - (2) The members shall be appointed by the Governor-General.

Qualification of members

72. A person shall not be appointed as a member unless he is or has been a Judge of a court created by the Parliament or of the Supreme Court of a State or of a Territory.

Term of office of members

- 73. (1) Subject to this Part, a member holds office for such period, not being more than 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.
- (2) Where a member who is a Judge referred to in section 72 ceases to be such a Judge, he ceases to hold office as a member, but is eligible for re-appointment.
- (3) A person other than a person serving as a Judge referred to in section 72 shall be appointed as a part-time member.
- (4) Subject to this Part, a member holds office on such terms and conditions as are prescribed.

Arrangement for appointment of holder of Judicial Office of a State or of the Northern Territory

- 74. (1) The Governor-General may, for the purpose of appointing as a member a person who is a Judge of a Supreme Court of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of the Northern Territory, as the case may be, as is necessary to secure that person's services.
- (2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse the State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

Remuneration and allowances

- 75. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, he shall be paid such remuneration as is prescribed.
 - (2) A member shall be paid such allowances (if any) as are prescribed.
- (3) Sub-sections (1) and (2) have effect subject to the Remuneration Tribunals Act 1973.
- (4) If a person who is a Judge referred to in section 72 is appointed as a member, he is not, while he receives salary or annual allowances as a Judge, entitled to remuneration under this Act.

Appointment of Judge not to affect tenure, &c.

76. The appointment as a member of a person who is a Judge of a court created by the Parliament, or service by such a person as a member, does not affect his tenure of office as a Judge or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge and, for all purposes, his service as a member shall be taken to be service as a Judge.

Acting President

- 77. (1) The Minister may appoint a member to act as President—
- (a) during a vacancy in the office of President; or
- (b) during any period, or during all periods,

when the President is absent from Australia or is, for any other reason, unable to perform the functions of his office.

- (2) A person acting in pursuance of an appointment under sub-section (1) has all the powers, and shall perform all the functions and duties, of the President.
- (3) A person appointed under sub-section (1) may resign that appointment by writing under his hand delivered to the Minister.

Removal from office

78. The Governor-General may remove a member from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

Resignation

79. A member may resign his office by writing signed by him and delivered to the Governor-General.

Arrangement of business

- 80. (1) Subject to section 81 and to the regulations, the President may give directions as to the arrangement of the business of the Document Review Tribunal and as to the person who is or persons who are to constitute the Document Review Tribunal for the purposes of a particular proceeding.
- (2) Where the President gives a direction as to the person who is or persons who are to constitute the Document Review Tribunal for the purposes of a particular proceeding, he may—
 - (a) at any time after the giving of the direction and before the commencement of the hearing of the proceeding; or
 - (b) if, in the case of a proceeding before the Tribunal constituted by 2 or more members, one of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the making of a decision on the question to which the proceeding relates—at any time after the member so ceases to be a member or to be available,

revoke the direction and give a further direction under sub-section (1) as to the person who is or persons who are to constitute the Tribunal for the purposes of the proceeding.

Constitution of Tribunal for exercise of powers

81. The Document Review Tribunal shall, for the purpose of the exercise of its powers in relation to a question referred to it, be constituted either by one member or by 3 members, whichever the President thinks appropriate having regard to the degree of public importance or complexity of that question.

Member presiding

- 82. (1) At the hearing of a proceeding before the Document Review Tribunal at which the Tribunal is constituted for the purposes of the proceeding by more than one member—
 - (a) in a case where the President is a member of the Tribunal as so constituted—he shall preside;
 - (b) in any other case—a member directed by the President to do so shall preside.

(2) In a case where a direction is given under sub-section 80 (2) varying the constitution of the Document Review Tribunal for the purposes of a proceeding or in a case to which paragraph 83 (1) (a) applies, any necessary direction may be given under this section as to the member who is to preside at the hearing of the proceeding by the Tribunal as reconstituted or as constituted by the remaining member or members, as the case may be.

Member of Tribunal ceasing to be available

- 83. (1) Where the hearing of any proceeding has been commenced or completed by the Document Review Tribunal constituted by 2 or more members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal for the purposes of the proceeding has ceased to be a member or has ceased to be available for the purposes of the proceeding—
 - (a) if the parties agree and the President does not give a direction under section 80 reconstituting the Tribunal for the purposes of the proceeding, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining member or members; or
 - (b) in any other case—the proceeding shall be reheard by the Tribunal as reconstituted in accordance with the directions of the President under section 80.
- (2) Where a proceeding is reheard by the Document Review Tribunal, the Tribunal may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted including a record of any evidence taken in the proceeding.

Places of sitting

84. Sittings of the Document Review Tribunal shall be held from time to time as required at the places at which the Registries of the Tribunal are established, but the Tribunal may sit at any place in Australia or in an external Territory.

Procedure of the Document Review Tribunal

85. The regulations may, except to the extent that it would be inconsistent with this Act, make provision for the application, subject to such exceptions or modifications as are specified in the regulations, of all or any of the following provisions, namely sections 32, 33, 35, 36, 36A, 39 and 40, sub-section 42 (2), section 42A and sub-sections 43 (2), (3), (4) and (5) of the Administrative Appeals Tribunal Act 1975, to and in relation to a proceeding before the Document Review Tribunal.

Application of provisions of Administrative Appeals Tribunal Act

86. (1) Sections 60, 61, 62, 63, 67, 68 and 69 of the Administrative Appeals Tribunal Act 1975 apply to and in relation to a proceeding before the Document Review Tribunal under this Act in like manner as they apply to and in relation to a proceeding before the Administrative Appeals Tribunal under that Act.

(2) Section 66 of the Administrative Appeals Tribunal Act 1975 applies to and in relation to members or officers or former members or former officers of the Document Review Tribunal in like manner as it applies to and in relation to members or officers or former members or former officers of the Administrative Appeals Tribunal.

Application of particular provisions to proceedings before the Document Review Tribunal

87. For the purposes of the consideration of any question referred, under section 58, to the Document Review Tribunal, section 61, sub-section 63 (2) and section 65 apply to and in relation to the proceeding before the Document Review Tribunal in like manner as they apply to a proceeding before the Administrative Appeals Tribunal.

Parties

- 88. The parties to a proceeding before the Document Review Tribunal in respect of a question referred to that Tribunal under section 58 in relation to a document to which an agency or Minister has refused to grant access in accordance with a request under this Act shall be—
 - (a) that agency or Minister; and
 - (b) the applicant.

Registries

- 89. (1) The Governor-General shall cause such Registries of the Document Review Tribunal to be established as he thinks fit.
- (2) The Governor-General shall designate one of the Registries as the Principal Registry.

Officers of Tribunal

- 90. (1) There shall be a Registrar of the Document Review Tribunal and such Deputy Registrars and other officers of the Document Review Tribunal as are required.
- (2) The Registrar, the Deputy Registrars and the other officers of the Document Review Tribunal shall have such duties, powers and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.
- (3) The Registrar, the Deputy Registrars and the other officers of the Document Review Tribunal shall be persons appointed or employed under the *Public Service Act* 1922.

PART VIII—MISCELLANEOUS

Protection against certain actions

- 91. (1) Where access has been given to a document and—
- (a) the access was required by this Act to be given; or

(b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 23 or 54, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

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

- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorisation or approval—
 - (a) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person to whom access is given;
 - (b) for the purposes of the law of copyright—of the doing, by the person to whom access is given, of any act comprised within the copyright in—
 - (i) any literary, dramatic, musical or artistic work;
 - (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
 - (iii) a published edition of a literary, dramatic, musical or artistic work,

contained in the document.

(3) Expressions used in paragraph (2) (b) have the same meaning as in the Copyright Act 1968.

Protection in respect of offences

- 92. Where access has been given to a document and—
- (a) the access was required by this Act to be given; or
- (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 23 or 54, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

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

Reports to Parliament

93. (1) The Minister shall, as soon as practicable after the end of each year ending on 30 June, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament.

- (2) Each agency shall, in relation to the agency, and each Minister shall, in relation to his official documents, furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.
- (3) Without limiting the generality of sub-section (1) or the kinds of information which an agency or a Minister might be required, in pursuance of sub-section (2), to furnish to the Minister administering this Act, a report of the Minister administering this Act shall set out—
 - (a) particulars of the operations of each agency and Minister under this Act during the year to which the report relates, including, in relation to each agency and Minister—
 - (i) the number of requests under section 19 for access to documents received during the year;
 - (ii) the number of decisions made during the year (other than decisions made under section 54) refusing to grant access to documents in relation to which requests have, at any time, been received;
 - (iii) the number of decisions made during the year (other than decisions made under section 54) deferring the provision of access to documents in relation to which requests have, at any time, been received:
 - (iv) in respect of sections 11, 12, 13, 15, 17, 18, 20, 22, 24 and each section in Part IV, the number of decisions made under each section during the year refusing to grant access to documents relating to which requests have, at any time, been received;
 - (v) particulars of the classification and designation of officers authorized by a responsible Minister or a principal officer in accordance with section 23 to make decisions in respect of requests;
 - (vi) the number of applications made during the year for the review of decisions under section 54 and particulars of the results of such reviews:
 - (vii) the number of applications made during the year to the Tribunal for the review of decisions and particulars of the results of such reviews;
 - (viii) the number of questions referred during the year to the Document Review Tribunal in relation to documents that are, or are, if they exist, claimed to be exempt documents under sections 33, 34, 35 and 36 and particulars of the decisions made upon such referrals;
 - (ix) particulars of the total charges collected during the year in dealing with requests, whenever received;
 - (x) particulars of changes in administrative procedures occasioned by the need to comply with the obligations imposed by this Act;

- (b) an identification of the guidelines, if any, issued during the year to which the report relates by the Minister administering this Act, or by the Department administered by that Minister, in relation to the manner in which agencies should comply with their obligations under this Act; and
- (c) a description of any other efforts by the Department referred to in paragraph (b) to assist agencies to comply with their obligations under this Act.
- (4) The first report by the Minister under sub-section (1) shall include particulars of the extent to which the responsible Minister of each agency, and each agency, has, respectively, complied with sections 8 and 9 of this Act.

Regulations

- 94. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for or in relation to—
 - (a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
 - (b) the officers who may give decisions on behalf of an agency.
- (2) Without limiting the generality of sub-section (1), regulations under that sub-section making provision for or in relation to the making of charges—
 - (a) shall not be such that the amount or rate of charge varies according to whether the applicant is included in one class of applicant or another class of applicant or according to whether a document is a document of one agency or of an agency included in one class of agency or is a document of another agency or of an agency included in another class of agency;
 - (b) shall not be such that a charge is made for time that is spent by an agency or Minister in examining a document to which a request for access has been made with a view to deciding whether that document contains exempt matter;
 - (c) shall, if a charge is made for time that is spent by an agency or a Minister in searching for or retrieving a document, provide for that charge to be calculated at a single hourly rate that shall be applied by an agency or a Minister in respect of any request, regardless of the classification or designation of the officer who searches for or retrieves the document; and

- (d) may provide for a charge to be made that takes into account the direct costs incurred by an agency or a Minister in making available an officer to supervise the inspection by a person of any document for which a request for access has been made under this Act.
- (3) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.

SCHEDULE 1

Section 6

Courts and tribunals exempt in respect of non-administrative matters

Australian Conciliation and Arbitration Commission

Industrial Registrar and Deputy Industrial Registrars

Flight Crew Officers Industrial Tribunal

Public Service Arbitrators and Deputy Public Service Arbitrators

Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the Coal Industry Act 1946.

SCHEDULE 2

Section 7

PART I

Exempt agencies

Aboriginal Land Councils and Land Trusts

Auditor-General

Australian Industry Development Corporation

Australian National Airlines Commission

Australian National Railways Commission

Australian Overseas Projects Corporation

Australian Secret Intelligence Service

Australian Security Intelligence Organization

Australian Shipping Commission

Canberra Commercial Development Authority

Commonwealth Banking Corporation; Commonwealth Trading Bank; Commonwealth Savings Bank; Commonwealth Development Bank

Commonwealth Serum Laboratories Commission

Export Finance and Insurance Corporation

Health Insurance Commission

Housing Loans Insurance Corporation

National Debt Commission

National Labour Consultative Council

Office of National Assessments

Pipeline Authority

Snowy Mountains Engineering Corporation

Superannuation Fund Investment Trust

PART II

Agencies exempt in respect of particular documents

Albury-Wodonga Development Corporation, in relation to documents in respect of its competitive commercial activities

Australian Apple and Pear Corporation, in relation to documents in respect of its competitive commercial activities

Australian Broadcasting Commission, in relation to its program material

Australian Canned Fruits Corporation, in relation to documents in respect of its competitive commercial activities

- Australian Dairy Corporation, in relation to documents in respect of its competitive commercial activities
- Australian Dried Fruits Corporation, in relation to documents in respect of its competitive commercial activities
- Australian Egg Board, in relation to documents in respect of its competitive commercial activities
- Australian Honey Board, in relation to documents in respect of its competitive commercial activities
- Australian Meat and Live-stock Corporation, in relation to documents in respect of its competitive commercial activities
- Australian Postal Commission, in relation to documents in respect of its competitive commercial activities
- Australian Telecommunications Commission, in relation to documents in respect of its competitive commercial activities
- Australian Wheat Board, in relation to documents in respect of its competitive commercial activities

 Australian Wine and Brandy Corporation, in relation to documents in respect of its competitive commercial activities
- Australian Wool Corporation, in relation to documents in respect of its competitive commercial
- Department of Defence, in relation to documents in respect of activities of the Defence Signals Directorate and the Joint Intelligence Organization
- Department of the Treasury, in relation to documents in respect of activities of the Australian Loan Council and in respect of the competitive commercial activities of the Royal Australian Mint
- Overseas Telecommunications Commission, in relation to documents in respect of its competitive commercial activities
- Reserve Bank of Australia, in relation to documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters
- Special Broadcasting Service, in relation to its program material