



New South Wales

# Government Information (Public Access) Amendment Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Justice Legislation Amendment Bill (No 3) 2018*.

## Overview of Bill

The object of this Bill is to amend the *Government Information (Public Access) Act 2009* (the *principal Act*) to give effect to recommendations arising from a statutory review of the principal Act (the *Review*) tabled in Parliament on 10 August 2017.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      **Amendment of Government Information (Public Access) Act 2009 No 52**

### Access applications

**Schedule 1 [6], [7] and [9]** give effect to recommendation 3 of the Review. **Schedule 1 [6] and [9]** allow an agency to accept access applications electronically, without requiring the electronic form to be approved by the Information Commissioner. **Schedule 1 [7]** provides that an access application must include the applicant's name and postal or email address.

**Schedule 1 [8]** gives effect to recommendation 19 of the Review by requiring an applicant to specify in an access application the name of any other agency the applicant has applied to for

substantially the same information. Failure to disclose the other agency, however, does not invalidate the access application.

**Schedule 1 [10]** gives effect to recommendation 4 of the Review by allowing an agency, for the purposes of transferring part of an access application to another agency, to split the application into 2 or more applications.

### **Disclosure logs**

**Schedule 1 [17]** makes it clear that if a person objects to the inclusion of information in an agency's disclosure log, the agency is to decide whether the objection outweighs the general public interest in including the information in the disclosure log. **Schedule 1 [28] and [30]** give effect to recommendation 2 of the Review by providing that, on review of the agency's decision to include the information, the burden lies with the objector to establish why the objection outweighs the general public interest.

**Schedule 1 [16]** gives effect to recommendation 19 of the Review by allowing a person to object to the inclusion of information on an agency's disclosure log if the information concerns the compilation or analysis of statistics that has been, is being, or is intended to be carried out by the person.

### **Process for dealing with access applications**

**Schedule 1 [14]** gives effect to recommendation 5 of the Review by allowing an agency to consult with another agency when determining whether there is an overriding public interest against disclosure of the information requested in an access application, or whether a person is required to be consulted with under section 54 of the principal Act.

**Schedule 1 [21]** gives effect to recommendation 7 of the Review by providing that an agency, in deciding whether dealing with an access application would require an unreasonable and substantial diversion of the agency's resources, may take into account several considerations, including the agency's size and resources. However, the considerations, on balance, must outweigh the general public interest in favour of disclosure as well as the demonstrable importance of the information to the applicant.

**Schedule 1 [15]** gives effect to recommendation 19 of the Review by providing that an agency may require a person, as a precondition of the agency providing personal information to that person in response to an access application, to take reasonable steps to prove the person's identity.

### **Deciding access applications**

**Schedule 1 [18]** gives effect to recommendation 19 of the Review. The amendment allows an agency to decide that information is already available to an applicant, and is therefore not required to be provided to the applicant, if the information is publicly available on a website, available to the person by way of a standing rule or order of Parliament or if the information has already been provided to the person and the agency has no reason to believe the person is no longer in possession of the information. **Schedule 1 [19]** makes a consequential amendment.

**Schedule 1 [20]** gives effect to recommendation 8 of the Review by allowing an agency to refuse to deal with an access application if the agency reasonably believes the applicant, or a person acting in concert with the applicant, is a party to current court proceedings and able to apply to that court for the information.

### **Internal review of agency decisions**

**Schedule 1 [26]** gives effect to recommendation 9 of the Review by providing that the 15-day period within which an agency must decide an internal review does not commence, in circumstances where more than one person may apply for an internal review, until the end of the time in which any of those persons may apply for internal review.

### External review of agency decisions

**Schedule 1 [27]** gives effect to recommendation 12 of the Review by providing that the required period of review by the Information Commissioner of a decision of an agency is 40 working days, unless the period is extended on agreement with the applicant for review. If, on the expiration of the review period, the Information Commissioner has not made any recommendations, no recommendations by the Commissioner are deemed to have been made.

**Schedule 1 [29]** gives effect to recommendation 13 of the Review by providing that, if an applicant for review is not the access applicant, the decision of an agency must first be internally reviewed by the agency before it can be reviewed by the Civil and Administrative Tribunal (*NCAT*).

**Schedule 1 [31]–[33]** give effect to recommendation 14 of the Review. **Schedule 1 [31]** allows NCAT to order that a person must not make any further access applications without first obtaining the approval of NCAT if the person, or a person acting in concert with that person, has made 3 access applications in the previous 2 years that lacked merit (a *restraint order*). **Schedule 1 [32]** provides for the ways in which a restraint order may be applied. **Schedule 1 [33]** provides for the matters which NCAT may consider when deciding whether to approve an access application being made by a person subject to a restraint order.

**Schedule 1 [34]** gives effect to recommendation 15 of the Review by allowing NCAT on its own initiative to report an officer of an agency to the Minister responsible for the agency if NCAT is of the opinion that the officer has failed to exercise in good faith a function conferred on the officer by the principal Act. If the Minister is a party to the proceedings, NCAT may report the officer to the Information Commissioner.

### Public interest considerations against disclosure

**Schedule 1 [40]** gives effect to recommendation 16 of the Review by making it clear that information is Cabinet information if it is contained entirely or in part in a document that reveals information concerning a Cabinet decision or reveals a position of a Minister on a matter in Cabinet.

**Schedule 1 [44]** gives effect to recommendation 17 of the Review by providing that it is to be conclusively presumed that there is an overriding public interest against disclosure of information if the information is contained in a document concerning law enforcement and public safety created by a law enforcement agency in another jurisdiction, including a jurisdiction outside of Australia.

**Schedule 1 [46]** gives effect to recommendation 18 of the Review by including information that relates to the review functions of the Privacy Commissioner as excluded information for the purposes of the principal Act.

**Schedule 1 [41], [54] and [55]** give effect to recommendation 19 of the Review. **Schedule 1 [41]** provides that it is conclusively presumed that there is an overriding public interest against disclosure of any information contained in a document that was, in response to a court order, not compelled by a court to be produced on the grounds of privilege.

**Schedule 1 [54]** provides that personal information does not include the information of an individual engaged in the exercise of public functions if the information relates to the individual's position title, public functions or the agency in which the individual works.

**Schedule 1 [55]** provides that information is not considered to be government information held by an agency if the information was unsolicited and not relevant to the agency's business or functions.

### Miscellaneous amendments

**Schedule 1 [53]** gives effect to recommendation 6 of the Review by excluding from the definition of *working day* the period declared by the Premier as the Christmas closedown period.

**Schedule 1 [25]** gives effect to recommendation 10 of the Review by inserting a note to aid interpretation in relation to fees.

The following amendments give effect to recommendation 19 of the Review.

**Schedule 1 [4]** provides that a government contract, to which an agency is a party, is to be recorded on the agency's register if the contract has a value of \$150,000 or more, including GST.

**Schedule 1 [12]** combines similar provisions that relate to statements required to be made by an agency when acknowledging receipt of access applications.

**Schedule 1 [22]** provides that the obligation to refund an application fee does not apply to any application transferred to or from the agency.

**Schedule 1 [23]** provides that the total discount on any processing charge for dealing with an access application must not be more than 50%.

**Schedule 1 [35]** makes it clear that copies of certain annual reports are only to be provided to the Information Commissioner after the report has been tabled in Parliament.

**Schedule 1 [50] and [51]** insert savings and transitional provisions consequential on the enactment of the proposed Act.

**Schedule 1 [1]–[3], [5], [11], [13], [24], [36]–[39], [42], [43], [45], [47]–[49] and [52]** make minor amendments of a law revision nature, including amendments to update cross-references and references to certain officers and agencies that have changed names.