

# CONCURRENCE COPY

## **FREEDOM OF INFORMATION BILL, 1982**

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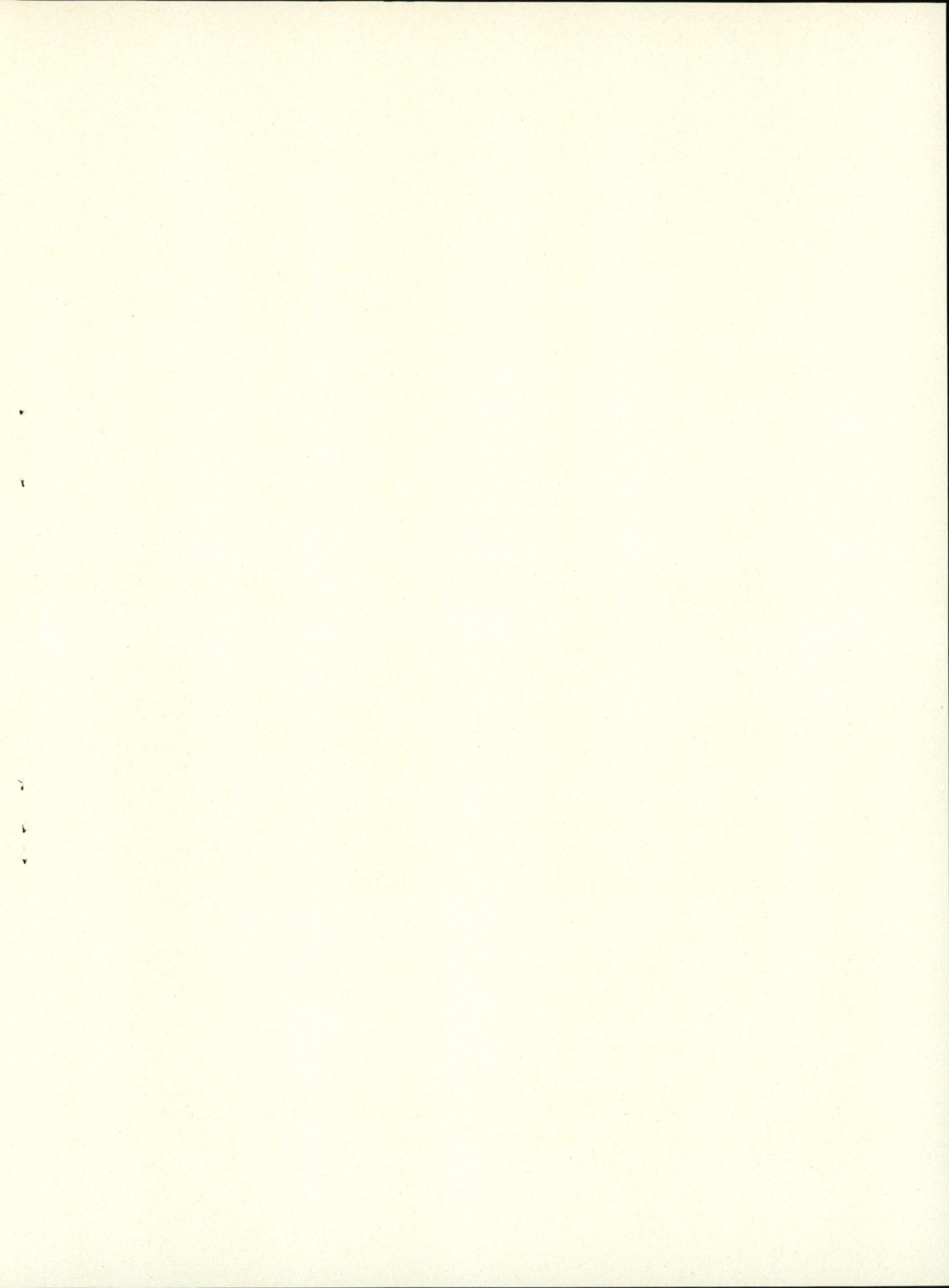
### **EXPLANATORY NOTE**

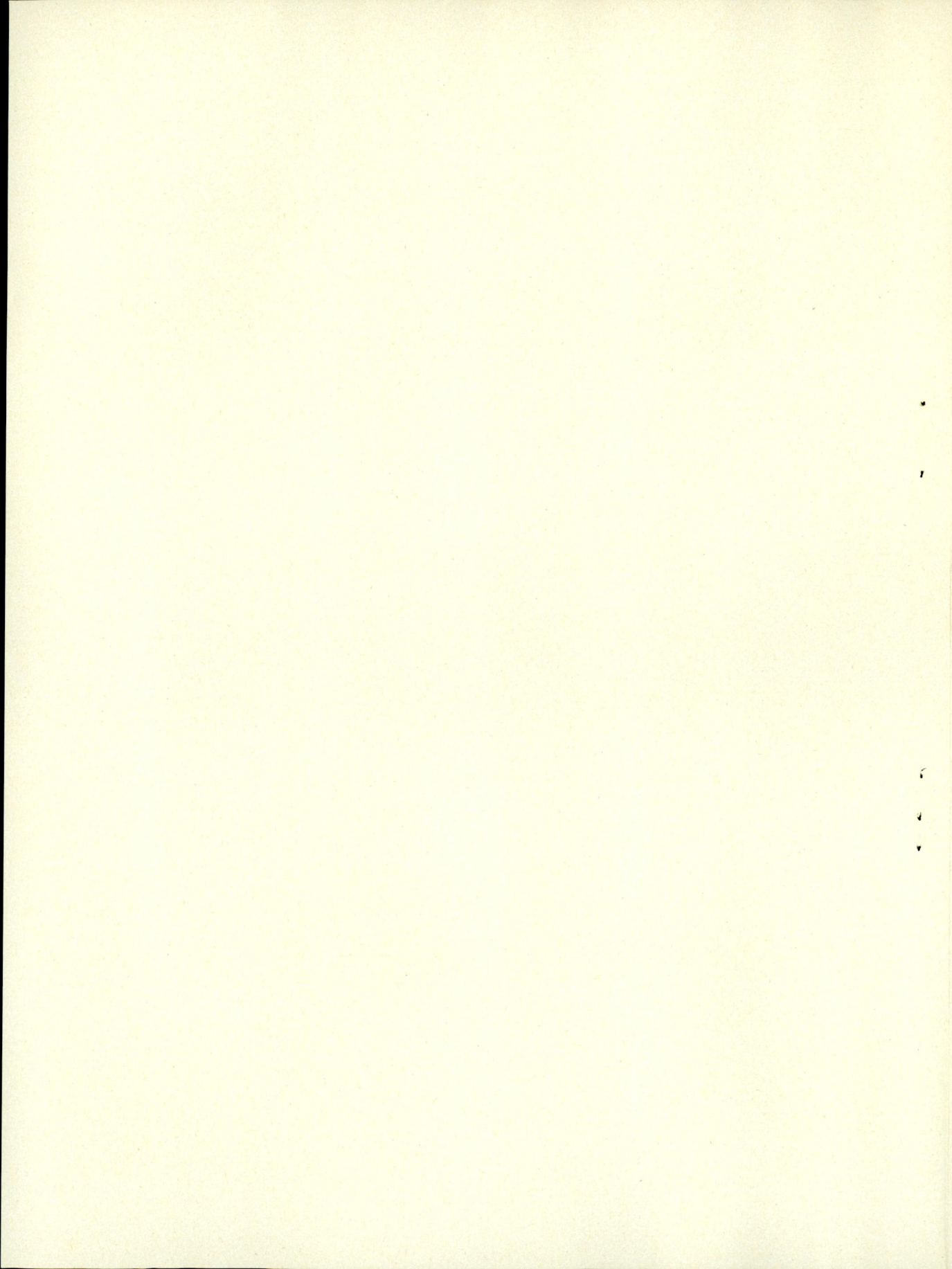
**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to permit members of the public rights of access to documents of the Government of New South Wales and of its agencies subject to certain procedures, qualifications and specific processes.

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# FREEDOM OF INFORMATION BILL, 1982

No. , 1982.

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## A BILL FOR

An Act to give members of the public rights of access to documents of the Government of New South Wales and of its agencies.

[MR MOORE—14 *October*, 1982.]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

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**PART I.****PRELIMINARY.****Short title.**

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

**Commencement.**

10 2. (1) Subject to subsection (2) and to subsection 23 (3), this Act shall commence 6 months after the date of assent to this Act.

(2) The Governor may by proclamation provide that this Act shall not commence operation in respect of an agency until a date specified in the proclamation, provided that the period elapsing between the date of commencement of this Act and the date specified in the proclamation shall not be more than 1 year.

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**Division of Act.**

3. This Act is divided as follows:

PART I.—PRELIMINARY—*ss.* 1–9.

20 PART II.—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION—*ss.* 10–14.

PART III.—ACCESS TO DOCUMENTS.—*ss.* 15–33.

PART IV.—EXEMPT DOCUMENTS—*ss.* 34–46.

PART V.—AMENDMENT OF PERSONAL RECORDS—*ss.* 47–51.

25 PART VI.—ROLE OF THE OMBUDSMAN—*ss.* 52–57.

PART VII.—REVIEW OF DECISIONS—*ss.* 58–67.

PART VIII.—MISCELLANEOUS—*ss.* 68–72.

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**Act binds Crown.**

4. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**5 Object.**

5. (1) The object of this Act is to extend as far as possible the right of the community to access to information in the possession of the Government of New South Wales by—

- 10 (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
- 15 (b) creating a general right of access to information in documentary form in the possession of Ministers, departments and public authorities, limited only by what is necessary to maintain the confidentiality of documents which by virtue of a provision of Part IV may be exempt documents.

20 (2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and 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.**

25 6. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“agency” means a Department or a prescribed authority;

30 “applicant” means a person who has made a request or who has applied under subsection 14 (1) for a statement published by a principal officer to be altered;

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“Court” means the Supreme Court of New South Wales;

“Department” means a Department of the Public Service of New South Wales other than the Departments of the Parliament;

5 “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  
10 does not include library material maintained for reference purposes;

15 “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;

“enactment” means an Act or an instrument (including rules, regulations or by-laws) made under an Act;

“exempt document” means—

20 (a) a document, which, by virtue of a provision of Part IV, is an exempt document; or

(b) a document in respect of which, by virtue of section 9, an agency is exempt from the operation of this Act;

“exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document;

25 “officer”, in relation to an agency, includes a member of the agency or a member of the staff of the agency;

30 “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 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;

35 “Ombudsman” means the New South Wales Ombudsman;



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“prescribed authority” means—

- 5 (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 subsection (2), is not to be taken to be a prescribed authority for the purposes of this Act; or
- (iii) a Royal Commission;
- 10 (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 or by a Minister; or
- 15 (ii) an incorporated company or association over which the State is in a position to exercise control;
- (c) Subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment; or
- 20 (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, or by a Minister, otherwise than under an enactment,
- 25 but does not include—
- (e) a local council established by the Local Government Act, 1919; or
- (f) a person performing the duties of an office the duties of which he performs as an officer of a local council established by the Local Government Act, 1919;
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“principal officer” means—

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Department Head; and

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(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

5 (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;

10 “request” means a request made in accordance with subsection 19 (1);

“responsible Minister” means—

(a) in relation to a Department—the Minister administering the relevant Department;

15 (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;

20 (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;

25 or another Minister acting for and on behalf of that Minister.

(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  
30 authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.

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(3) A person shall not be taken to be a prescribed authority by virtue of his holding, or performing the duties of—

- (a) a prescribed office;
- 5 (b) 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;
- (c) an office of member of a body; or
- (d) an office established by an enactment for the purposes of a prescribed authority.

10 (4) For the purposes of this Act, the Police Force of New South Wales and the Teaching Service of New South Wales shall be deemed to be prescribed authorities.

**Act to apply to courts in respect of administrative matters.**

7. For the purposes of this Act—

- 15 (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  
20 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  
25 court unless the document relates to matters of an administrative nature.

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**Act to apply to certain tribunals in respect of administrative matters.**

8. For the purposes of this Act;

(a) each tribunal, authority or body specified in Schedule 1 is deemed to be a prescribed authority;

5 (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

10 (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,

15 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.**

20 9. (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.

25 (3) 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.

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## PART II.

## PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION.

**Publication of information concerning functions and documents of agencies.**

10. (1) The responsible Minister of an agency shall—

- 5 (a) cause to be published, as soon as practicable after the commencement of this Act but not later than 12 months after that commencement, in a form approved by the Minister administering this Act—
- 10 (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;
- 15 (ii) a statement setting out particulars of any arrangements that exist for bodies or persons outside the New South Wales 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;
- 20 (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 11 (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;
- 25 (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;
- 30 (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

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officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents may be directed; and

- 5 (vi) a statement listing all boards, councils, committees and other bodies constituted by 2 or more persons, that are a part of, or that have been established for the purpose of advising, the agency, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection; and
- 10 (b) during the year commencing on 1st January next following the publication in respect of the agency, of the statement under sub-paragraph (a) (i), (ii), (iii), (iv), (v) or (vi) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published statements bringing up to
- 15 date the information contained in the previous statement or statements published under that sub-paragraph.

(2) In approving a form under subsection (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.

- 20 (3) The information to be published in accordance with this section may be published by including it in the publication known as the New South Wales 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

25 cause that document to be an exempt document.

(5) Subsection (1) applies in relation to an agency that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the agency comes into existence.

### 30 **Certain documents to be available for inspection and purchase.**

11. (1) This section applies in respect of an agency, to documents that are provided by the agency for the use or guidance of, or are used or may be used by, the agency or its officers in making decisions or recommendations, or in providing advice to persons outside the agency, under or for the

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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, eligible or subject, being—

- 5 (a) manuals of other documents containing interpretations, rules, guidelines, statements of policy, 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 New South Wales administration;
- 10 (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
- 15 (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 agency or as published by another agency.

20 (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;
- 25 (b) not later than 12 months after the commencement of this Act, 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 places or places where copies may be inspected and may be
- 30 purchased; and
- (c) not later than 3 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 3 months, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or
- 35 statements.

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(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 Act, but shall, before that time, comply with that paragraph so far as is practicable.

5 (4) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principle officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary  
10 to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) A document from which exempt matter has been excluded in accordance with subsection (4) shall indicate, to the extent practicable without exempt matter being disclosed, the nature of the matter excluded.

15 (6) Notwithstanding the opinion of the principal officer that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subparagraph (2) (a) (ii) without exempt matter being disclosed, the principal officer of the agency shall cause that fact to be published.

20 (7) Subsections (2) and (3) apply in relation to an agency that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the agency comes into existence.

**Unpublished documents not to prejudice public.**

25 12. If a document required to be made available in accordance with section 11, being a document containing a rule, guideline, policy or practice relating to the function of an agency was not made available, and included in a statement in the Gazette, as referred to in that section, before the time (being more than 12 months after the commencement of  
30 this Act, or the day on which the agency came into existence, whichever is the later) 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



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

**Certain documents to be listed in public index.**

13. (1) This section applies, in respect of an agency, to any document that is—

- 10 (a) a report, or a statement containing the advice or recommendations, of a prescribed body or organization established within the agency;
- (b) a report, or a statement containing the advice or recommendations of a government advisory body, being a body established by or under an enactment, or by the Governor or a Minister, that has the  
15 principal function of providing advice or making recommendations to an agency or to the responsible Minister of that agency;
- (c) a report, or a statement containing the advice or recommendations, of an inter-departmental committee whose membership includes an officer of the agency;
- 20 (d) a report, or a statement containing the advice or recommendations, of a committee established within the agency to submit a report, provide advice or make recommendations to the responsible Minister of that agency or to another officer of the agency who is not a member of the committee;
- 25 (e) a report (including a report concerning the results of studies, surveys or tests) prepared for the agency or for the responsible Minister of the agency in his capacity as responsible Minister of that agency, by a scientific or technical expert, whether employed within the agency or not, including a report expressing the opinion of such an expert on scientific or technical matters;
- 30 (f) a report prepared for the agency, or for the responsible Minister of the agency in his capacity as responsible Minister of that agency, by a consultant who was not a member of the staff of that agency, or a member of, or an officer of, that agency;

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- (g) a report prepared within the agency and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;
- 5 (h) a report on the performance or efficiency of the agency, or of an office, division or branch of the agency, whether the report is of a general nature or concerns a particular policy, programme or project administered by the agency;
- 10 (i) a report containing final plans or proposals for the reorganization of the functions of the agency, the establishment of a new policy, programme or project to be administered by the agency, or the alteration of an existing policy, programme or project administered by the agency, whether or not the plans or proposals are subject to approval by an officer of the agency, another agency, the responsible Minister of the agency or the Cabinet;
- 15 (k) a report of a test carried out within the agency on a product for the purpose of Government equipment purchasing;
- (l) an environmental impact statement prepared within the agency; and
- 20 (m) a valuation report prepared for the agency by a valuer, whether or not the valuer is an officer of the agency.

(2) The principal officer of an agency shall—

- 25 (a) not later than 3 months after the date of commencement of this Act, cause to be published in the Gazette a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the commencement of this Act and are in the possession of the agency; and
- 30 (b) within 3 months after the publication of the first statement under paragraph (a) and thereafter at intervals of not more than 3 months, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or statements.

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(3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be referred to in a statement published in accordance with paragraph (2) (a), if the fact of the existence of the document cannot be referred to in the statement without exempt matter  
5 being disclosed.

(4) Subsection (2) applies in relation to an agency that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the agency comes into existence.

**10 Person may request that document be indexed.**

**14. (1)** A person may serve upon the principal officer of an agency a notice in writing stating that, in the opinion of the person, a statement published by the principal officer under subsection 11 (2) or 13 (2) does not specify a document as described in subsection 10 (1) or 13 (1) that was  
15 required to be specified in the statement.

(2) The principal officer shall—

(a) make a decision within 21 days of receiving a notice as to whether to specify in the next statement to be published under paragraph 11 (2) (c) or 13 (2) (b), as the case may be, the document referred to in the notice; and  
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(b) cause the person to be given notice in writing of his decision.

(3) Where the decision is adverse to the persons' claim, the notice shall—

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and  
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(b) 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  
30 58 may be made.

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**PART III.****ACCESS TO DOCUMENTS.****Right of access.**

5 **15.** 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.**

**16. (1)** A person is not entitled to obtain access under this Part to—

- 10 (a) 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;
- (b) a document that is available for purchase by the public in accordance with arrangements made by an agency; or
- 15 (c) an historical document that is preserved by the Archives Authority of New South Wales for exhibition purposes.

**(2)** Subject to subsection (3) where a request is made by a person for access to a document under this Part—

- 20 (a) if the request is made before the expiration of 12 months after the commencement of this Act—he is not entitled to obtain access to the document under this Part unless the document became a document of an agency or an official document of a Minister on or after the commencement of this Act; and
- 25 (b) if the request is made on or after the expiration of 12 months after the commencement of this Act—he is not entitled to obtain access to the document under this Part unless the document became a document of an agency or an official document of a Minister at a date within 5 years before the commencement of this Act.

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(3) Notwithstanding anything in subsection (2), a person is entitled to obtain access to a document, or to a part of a document under this Part—

- (a) if the document or part of the document, contains information relating to the personal affairs of that person; or
- 5 (b) if access to the document by that person 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.

(4) Regulations may be made for the modification of subsection (2) 10 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 subsection.

(5) References in subsection (3) to subsection (2) shall be construed as including references to subsection (2) as previously modified in 15 pursuance of regulations made under subsection (3).

(6) A document, other than a document of an agency or an official document of a Minister, that has been placed in the custody of the State Library of New South Wales or the Archives Authority of New South Wales by a person (including a Minister or former Minister) shall be available to 20 the public in accordance with this Act, subject to any restrictions or conditions imposed by the person at the time the document was placed in the custody of the State Library or the Archives Authority as the case may be.

**Documents in the possession of the Archives Authority and documents of a Royal Commission.**

25 17. (1) For the purpose of this Act, a document that has been placed in the custody of the Archives Authority of New South Wales 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.

30 (2) Notwithstanding subsection (1), records of a Royal Commission that are in the custody of the Archives Authority shall, for the purposes of this Act, be deemed to be in the possession of the Department administered by the Minister administering the Royal Commissions Act, 1923.

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(3) Paragraph 13 (2) (b) and subsection 14 (6) of the Archives Act, 1960, shall be read subject to this Act, and a person in charge of a public office referred to in those provisions shall not impose restrictions on access to a document that is not an exempt document under this Act.

5 (4) Nothing in this Act affects the provision of access to documents by the Archives Authority in accordance with the Archives Act, 1960.

**Access to documents apart from this Act.**

10 18. 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 19. (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—

- 20 (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.

25 (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.

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5 (5) Where a request in writing is made to an agency for access to a document, the agency shall not refuse to comply with the request on the ground that the request does not comply with subsection (2), without first giving the applicant a reasonable opportunity of consultation with the agency with a view to the making of a request in a form that does comply with that subsection.

**Transfer of request.**

20. (1) A request for access to a document may be made to any agency which has a copy of the document.

10 (2) 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
- 15 (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, promptly transfer the request to the other agency.

20 (3) Where a request is made to an agency for access to a document that 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 9, the agency to which the request is made shall not transfer that request to the other body or person but shall deal with that request in accordance with this Act.

25 (4) 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,
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the agency to which the request is made shall transfer the request to the other agency.

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5 (5) 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.

(6) 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 the transfer was made.

(7) In this section "agency" includes a Minister.

#### 10 Request involving use of computers, etc.

##### 21. (1) Where—

- 15 (a) a request is made in writing and in accordance with the requirements of subsection 19 (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—
- 20 (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,

25 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) In this section "agency" includes a Minister.



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**Access to documents to be given on request.**

22. (1) Subject to this Act, where—

- 5 (a) a request is made in writing and in accordance with the requirements of subsection 19 (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.

10 (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 request to be decided.**

15 23. (1) An agency or Minister shall take all reasonable steps to enable an applicant to be notified of a decision on a request as soon as practicable but in any case not later than 21 days after the day on which the request is received by or on behalf of the agency or Minister.

(2) An agency or Minister may, within the period specified in subsection (1), by notice in writing to the applicant, extend that period for a further 14 days if the decision on the request cannot be made within the time 20 specified in subsection (1), for the reason that—

- (a) the document to which access is requested is located in a different town or city to that in which the decision on the request will be made;
- 25 (b) the agency or Minister, before making a decision, has to consult with—
- (i) an officer of the agency who is resident in a different town or city to that in which the decision on the request will be made; or
- 30 (ii) another agency, Government or person, which or who has a substantial interest in the document to which access is requested; or

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- 5 (c) the 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 it would not be reasonably possible for the agency or Minister to make a decision on the request within the period specified in subsection (1), having regard to the number and volume of the documents and to any difficulties that would exist in identifying, locating or collating the documents within the filing system of the agency or the office of the Minister.
- 10 (3) This section shall commence 12 months after the date of assent to this Act, and until the commencement of this section, an agency or a Minister shall take all reasonable steps to enable an applicant to be notified of a decision on a request as soon as practicable.

**Forms of access.**

- 15 **24. (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;
  - 20 (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  
25 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 subsection (3) and to section 26, where the applicant  
30 has requested access in a particular form, access shall be given in that form.

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- (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;
  - 5 (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
  - 10 (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by New South Wales, an agency, another State, or the Commonwealth) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department, access in that form may be refused and access given in another form.

(4) Subject to subsection 21 (1), where a person requests access 15 to a document in particular form and, for a reason specified in subsection (3), access in that form is refused but access is given in another form, the applicant shall not be required to pay a charge in respect of the provision of access to the document that is greater than the charge that he would have been required to pay if access had been given in the form requested.

#### 20 **Deferment of access.**

25 **25. (1)** An agency which, or a Minister who, receives a request for a document which has been prepared for presentation to the Parliament, for release to the Press, 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, may defer the provision of access to the document until a reasonable period after its preparation for it to be so presented, released or made available.

30 **(2)** Where the provision of access to a document is deferred in accordance with subsection (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.

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**Deletion of exempt matter.****26.** 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; and
- 5 (b) it is practicable for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document,

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  
10 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 subsection (1)—

- 15 (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 29 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.
- 20

**Decisions to be made by authorized persons.**

25 **27. (1)** Subject to subsection (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, and published in the Gazette.

**(2)** A regulation made, or an arrangement approved by the responsible Minister or the principal officer of an agency, for the purposes of  
30 subsection (1), may provide that an officer of an agency shall have authority to make only some categories of decisions under this Act in relation to requests for access to documents, and for this purpose it is the intention of

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Parliament that the authority to grant access to a document in accordance with a request shall be given to as large a number of officers of an agency as is practicable and that the authority to refuse to grant access to a document in accordance with a request shall be given to as few a number  
5 of officers of an agency as is practicable.

(3) 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-  
10 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.

15 (4) Where a request is made to an agency for a document, and no arrangements in respect of documents of that type have been made and published under subsection (1), a decision on that request shall, for the purpose of enabling an appeal to be made to the Court, be deemed to have been made by the principal officer of the agency.

**20 Information as to existence of certain documents.**

**28. (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-  
25 mentioned document to be an exempt document by virtue of subsection 38 (1).

(2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the  
30 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

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Minister, of such a document but that, assuming the existence of such a document, it would be an exempt document under subsection 38 (1) and, where such a notice is given—

- 5 (a) section 29 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 VII, 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 subsection 38 (1).

**10 Reasons and other particulars of decisions to be given.**

**29. (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,  
15 and the notice shall—

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and state the reasons for the decision;
- 20 (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision;
- (c) where access is given to a document in accordance with section 26, state that the document is a copy of a document from which exempt matter has been deleted;
- 25 (d) 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 58 may be made; and
- 30 (e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.

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(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.

5 **Procedure on request in respect of document relating to business affairs, etc.**

30. (1) Where—

- 10 (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
- 15 (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 58 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 44, 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 23—
- 20 (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 44; and
- 25 (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 44 the agency or Minister shall cause notice in writing of the 30 decision to be given to the person who made the submissions.

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**Persons to be notified of liability to pay charges.**

31. 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.**

10 32. (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.

15 (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

20 (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 21 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 subsection (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;

30 (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.



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**(4) Where—**

- (a) an application has been made to an agency or Minister under subsection (1);
- 5 (b) the period of 21 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, 10 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)** If an agency or a Minister provides a person with access to a document at an office or place which is different to the office or place at 15 which the document is normally kept, and the agency or Minister incurs costs in making that document available at that office or place that would not have been incurred if the person had been provided with access to the document at the place at which it is normally kept, the person shall not be required to pay any charge attributable to that cost.

20 **(6)** In this section, “charge” means a charge that the applicant is notified under section 31 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 23.**

25 **33. (1)** Where an applicant receives a notification under section 31 before the day on which the period that is, for the purposes of section 23, the prescribed period in relation to the request made by him expires or, but for the operation of this subsection, would expire, being a notification to the effect that the applicant is liable to pay a specified charge in respect of 30 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 subsection (3), the relevant day in relation to that request.

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(2) The reference in subsection (1) to the period that is, for the purposes of section 23, the prescribed period, in relation to a request, shall be read as a reference—

- 5 (a) unless paragraph (b) applies—to the period of 21 days commencing on the day on which the request was received by or on behalf of the agency to which or the Minister to whom it was made; or
- (b) if the period has been extended under subsection 23 (2)—to that extended period.

10 (3) For the purposes of subsection (1), “relevant day”, in relation to a request made by an applicant to whom a notification has been given under section 31 setting out the applicant’s liability to pay a specified charge, is—

- 15 (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 32 or a review of the decision in respect of the charge under section 59)—the day on which that charge or that deposit is so paid;
- 20 (b) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), makes application under section 32 for the total or partial remission of the charge—
- 25 (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
- 30 (c) in a case where the applicant, having not paid the charge or deposit referred to in paragraph (a), appeals to the Court under section 59 for a review of the decision referred to in section 31—
- 35 (i) if a decision is made by the Court setting aside the decision referred to in section 31—the day on which the applicant is notified by the Court of that decision; or

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- 5 (ii) if a decision is made by the Court setting aside the decision referred to in section 31 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.

10 **Cabinet and Executive Council documents.**

34. (1) A document is an exempt document if it is—
- 15 (a) a document that has been submitted to the Cabinet or 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 Cabinet or by the Executive Council;
- (b) an official record of the Cabinet or 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
- 20 (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet or of the Executive Council, other than a document by which a decision of the Cabinet or of the Executive Council was officially published.
- (2) Subsection (1) shall cease to apply to a document referred to in  
25 that subsection—
- (a) which is brought into existence after the date of commencement of this Act; and
- (b) when a period of 10 years has elapsed since the end of the year  
30 ending on 31st December in which the document came into existence.

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(3) Subsection (1) does not apply to a document that has been submitted to the Cabinet or to the Executive Council, as the case may be, for its consideration, or is proposed by a Minister to be so submitted, by reason that—

- 5 (a) the document contains only factual or statistical material and not opinion, advice or recommendation;
- (b) the document is a report (including a report concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports  
10 expressing the opinions of such experts on scientific or technical matters;
- (c) the document is a report prepared for a Minister or an agency by a consultant who is not a member of the staff of that Minister or agency, or a member of, or an officer of that agency; or
- 15 (d) the document is a report, or a statement containing the advice or recommendation of a government advisory body, being a body established by or under an enactment, or by the Governor or a Minister, that has the principal function of providing advice or making recommendations to an agency or Minister.

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

**Documents affecting relations with Commonwealth and States, etc.**

35. A document is an exempt document if disclosure of the document under this Act—

- 25 (a) could reasonably be expected to substantially impair relations between New South Wales and the Commonwealth, a State or the Northern Territory; and
- (b) would be contrary to the public interest.

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**Documents exempt under Commonwealth Freedom of Information Act, 1981.**

36. (1) A document is an exempt document if disclosure of the document under this Act would divulge any information or matter communicated  
5 by or on behalf of the Government of the Commonwealth to the Government of the State or a person receiving the communication on behalf of that Government, where a Minister of the Government of the Commonwealth or a person acting on behalf of a Minister has notified the Government of the State, whether at the time of communication of the information or at a  
10 later time, that the information is exempt matter under the Commonwealth Freedom of Information Act, 1981.

(2) For the purposes of this Act, a certificate signed by a Minister of the Crown certifying that a document is one of a kind referred to in subsection (1) establishes conclusively that it is such a document.

15 (3) Where a document is a document referred to in subsection (1) by reason only of information or matter contained in a particular part or particular parts of the document, a certificate under subsection (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.

**20 Internal working documents.**

37. (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  
25 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 New South Wales; and

(b) would be contrary to the public interest.

30 (2) In the case of a document of the kind referred to in subsection 11 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is provided for the use or guidance of, or is used or may

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be used for, the purpose of the making of decisions or recommendations, or providing advice to persons outside an agency, referred to in subsection 11 (1).

5 (3) This section does not apply to a document by reason only of purely factual material contained in the document.

(4) This section does not apply to—

- 10 (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
- 15 (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.

(5) 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 29 shall state the ground of public interest on which the decision is based.

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

25 (7) A power delegated under subsection (6), when exercised by the delegate, shall, for the purposes of this act be deemed to have been exercised by the responsible Minister.

(8) A delegation under subsection (8) does not prevent the exercise of a power by the responsible Minister.

30 (9) Subsection (1) shall cease to apply to a document referred to in that subsection—

- (a) which is brought into existence after the date of commencement of this Act; and

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- (b) when a period of 10 years has elapsed since the end of the year ending on 31st December, in which the document came into existence.

**Documents affecting enforcement of the law and protection of public safety.**

- 5     **38. (1)** Subject to this section, 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 prejudice the enforcement or proper administration of the law in a particular instance;
  - 10    (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
  - (c) 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;
  - 15    (d) 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 reasonably be likely to, prejudice the effectiveness of those methods or procedures;
  - 20    (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement;
  - (f) endanger the security of a building, a vehicle carrying people or items, or a system or procedure established for the protection of people or items, for which or for whom protection is reasonably
  - 25    required; or
  - (g) facilitate the escape from custody of a person who is under lawful detention, or endanger the security of a centre for lawful detention.
- (2) This section does not apply to any document that is—
- 30    (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;

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- (b) a document containing any general outline of the structure of any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
- 5 (c) a report on the degree of success achieved in any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
- 10 (d) a report prepared in the course of routine law enforcement inspections or investigation by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
- (e) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation.

if it is in the public interest that access to the document should be granted  
15 under this Act.

**Documents to which secrecy provisions of enactments apply.**

39. A document is an exempt document if it is a document the unauthorised disclosure of which is prohibited or restricted by an enactment specified in the Third Schedule.

**20 Documents affecting financial or property interests of the State.**

40. A document is an exempt document if its disclosure under this Act—

- (a) would have a substantial adverse effect on the financial or property interest of the Government of New South Wales or of an agency;  
and
- 25 (b) would be contrary to the public interest.



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**Documents concerning certain operations of agencies.**

41. A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

- 5 (a) prejudice the effectiveness or procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- 10 (c) have a substantial adverse effect on the management or assessment of personnel by the Government of New South Wales or by an agency; or
- (d) have a substantial adverse effect on the conduct by or on behalf of the Government of New South Wales or an agency of industrial relations negotiations; and

would be contrary to the public interest.

**15 Documents affecting personal privacy.**

42. (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 persons (including a deceased person).

20 (2) Subject to subsection (3), the provisions of subsection (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.

25 (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  
30 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.

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**Documents subject to legal professional privilege.**

43. (1) A document is an exempt document if it is of such a nature that it would or could reasonably be expected to be privileged from production on the ground of legal professional privilege in pending or reasonably likely legal proceedings to which the Government of New South Wales or an agency is or may become a party.

(2) A document of the kind referred to in subsection 11 (1) is not an exempt document by virtue of subsection (1) of this section by reason only of the inclusion in the document of matter that is provided for the use or guidance of, or is used or may be used for, the purpose of the making of decisions or recommendations or providing advice to persons outside an agency, referred to in subsection 11 (1).

**Documents relating to business affairs, etc.**

44. (1) A document is an exempt document if its disclosure under this Act would disclose trade secrets of a person or of an organization or undertaking, or 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, being trade secrets or information the disclosure of which would, or could reasonably be expected to, unreasonably disadvantage that person in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs.

(2) A document is an exempt document if its disclosure under this Act would disclose trade secrets of, or information concerning the business, commercial or financial affairs of, an undertaking that is carried on by, or by an authority of, the State or a local government authority, being trade secrets or information the disclosure of which under this Act—

- (a) would, or could reasonably be expected to, unreasonably disadvantage that undertaking in respect of its lawful business, commercial or financial affairs; and
- (b) would be contrary to the public interest.

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(3) In deciding whether disclosure of information would, under subsection (1) or (2), unreasonably disadvantage a person, organization or undertaking, an agency or Minister shall, in addition to considering any matters that are relevant to be considered under subsection (1) or (2),  
5 consider in addition the following matters:

- (a) whether the trade secrets or information is generally available to competitors of the person, organization or undertaking;
- (b) whether the trade secrets or information would be exempt matter if it were brought into existence by an agency or a Minister;
- 10 (c) whether the trade secrets or information could be disclosed without causing substantial harm to the competitive position of the person, organization or undertaking; and
- (d) whether there are any considerations of public interest in favour  
15 of disclosure which outweigh any consideration of competitive disadvantage to the person, organization or undertaking, including but not limited to, the public interest in improved competition or in evaluating aspects of government regulation of corporate practices or environmental controls.

(4) The provisions of subsection (1) do not have effect in relation to  
20 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;
- 25 (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the persons making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
- 30 (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.

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**Documents affecting the economy of the State.**

45. A document is an exempt document if its premature disclosure under this Act—

- 5 (a) would, or could reasonably be expected to, have a substantial adverse affect on the ability of the Government of New South Wales to manage the economy of the State; or
- 10 (b) could reasonably by expected to result in 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 New South Wales in the course of, or for the purpose of, managing the economy of the State; and

would be contrary to the public interest.

**Documents containing material obtained in confidence.**

15 46. (1) A document is an exempt document if its disclosure under this Act would divulge any information communicated in confidence by or on behalf of a person or a government to an agency or a Minister, and

- (a) the information would be exempt matter if it were information that was brought into existence by an agency or by a Minister; or
- 20 (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure of the information under this Act would, or could reasonably be expected to, impair the ability of New South Wales or of an agency to obtain information of a similar kind to that contained in the document
- 25 in the future for the purpose of the administration of matters administered by an agency.

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**PART V.****AMENDMENT OF PERSONAL RECORDS.****Persons may make application for amendment of records.**

5     **47.** Where a person (in this section referred to as the “claimant”) who is an Australian citizen, or a permanent resident of Australia, 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
- 10     (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.**

15     **48. (1)** A request under section 47—

- (a) shall be in writing; and
- (b) shall specify an address in Australia to which a notice under this Part may be sent to the claimant.

20     **(2)** A request under section 47 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.**

25     **49. (1)** Where an agency to which or Minister to whom a request is made under section 47 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.

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(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
- 5 (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 47, the agency or Minister shall take all reasonable steps to enable the claim-  
10 ant 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 27 applies in relation to a decision in respect of a request made under section 47.

15 (5) Section 29 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 subsection 19 (1).

**Review of requests for amendment of records.**

20 **50. (1)** A reference in Part VII to a request shall be construed as including a request under section 47 but, for the purposes of the application of that Part to or in relation to a request made under that section—

- 25 (a) the reference in paragraph 59 (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 60 (1) (a) has effect as if “in accordance with section 23” were omitted;
- (c) paragraph 56 (1) (b) has effect as if “21 days or such other period as is applicable by virtue of the application of subsection 23 (2)”  
30 were omitted and “30 days” were substituted.

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- (d) the reference in subsection 60 (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;
- 5 (e) the reference in subsection 60 (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 subsection 60 (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.
- 10 (2) Where—
- (a) an agency or Minister refuses to amend a record pursuant to a request under section 48;
- (b) the claimant appeals to the Court for a review of the decision; and
- (c) the Court affirms the decision,
- 15 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
- 20 (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) Where a notice is given to an agency or Minister under subsection (2)—
- 25 (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
- 30 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

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(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.

**5 Notation of records supplied before commencement of this Act.**

**51.** 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 50 (3) (a) to a person (including any agency or Minister) to whom information contained in the record to which the notation  
10 relates was furnished before the commencement of this Act.

**PART VI.**

**ROLE OF THE OMBUDSMAN.**

**Interpretation.**

**52.** In this part—

- 15 (a) a reference to the conduct of an agency or of a Minister has the same meaning as it has for the purposes of the Ombudsman Act, 1974; and
- (b) conduct shall be deemed to have been engaged in by an agency  
in the circumstances in which it would be deemed to be so engaged  
20 in for the purposes of the Ombudsman Act, 1974.

**Complaints to the Ombudsman.**

**53. (1)** Subject to this Act, a person may complain to the Ombudsman concerning the conduct of an agency or of a Minister in the exercise of powers or the performance of functions under this Act.



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(2) Notwithstanding anything contained in this Act or in subparagraph 13 (4) (b) (v) of the Ombudsman Act, 1974, the exercise of the powers of the Ombudsman under the Ombudsman Act, 1974 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 appeal to the Court.

(3) Where a complaint is made to the Ombudsman under the Ombudsman Act, 1974 concerning the conduct of an agency in the exercise of powers or the performance of functions under this Act, an appeal to the Court 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 15 or 29 of the Ombudsman Act, 1974.

(4) Notwithstanding anything contained in the Ombudsman Act, 1974, 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 subsection 28 (1) of this Act.

**Annual report by the Ombudsman.**

54. Each annual report required to be submitted to the Minister by the Ombudsman under subsection 30 (1) of the Ombudsman Act, 1974—

(a) shall include a report on the operations of the Ombudsman during the year to which the report relates with respect to complaints made to the Ombudsman or investigations commenced or completed by the Ombudsman concerning the conduct of agencies or Ministers in the exercise of powers or the performance of functions conferred by this Act; and

(b) may include—

(i) such observations as the Ombudsman sees fit to make concerning the operation of this Act during the year to which the report relates; and

(ii) such recommendations as the Ombudsman sees fit to make concerning ways in which public access to documents of agencies or to official documents of Ministers might be better secured.

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**Scope of investigation by Ombudsman when certificate furnished under subsection 22 (2) of Ombudsman Act, 1974.**

55. Where—

- 5 (a) the Ombudsman has commenced an investigation of a decision made under this Act not to grant a request for access to a document; and
- (b) a certificate is furnished to the Ombudsman under subsection 22 (2) of the Ombudsman Act, 1974, in relation to that investigation,

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

**Investigation by the Ombudsman of action taken by Ministers.**

15 56. (1) The Minister administering this Act shall cause to be made by the date of commencement of this Act regulations that make provision for the modification and adaptation of the provisions of the Ombudsman Act, 1974, so as to enable complaints concerning the conduct of Ministers under this Act to be made to the Ombudsman and dealt with by him in a

20 manner substantially similar to the manner in which complaints concerning the conduct of agencies under this Act are made to the Ombudsman and dealt with by him.

(2) Where a complaint concerning the conduct engaged in by a Minister under this Act is made to the Ombudsman under the Ombudsman

25 Act, 1974, as modified and adapted in accordance with regulations made under subsection (1), paragraph 12 (1) (a) of the Ombudsman Act, 1974 (referring to sub-item 1 (b) of the Schedule to that Act), shall not be taken to prevent the investigation of the complaint.

**Ombudsman may represent persons in proceedings before the Court.**

30 57. (1) The Ombudsman may represent, or arrange for another person to represent, any person who appeals to the Court under section 59 for review of a decision, not being a decision made under section 30 of this

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Act in the proceedings before the Court pursuant to that application, if the Ombudsman is of the opinion, in all the circumstances of the case, that it is reasonable for him to do so.

- 5 (2) Without limiting the generality of the matters to which the Ombudsman may have regard in deciding whether to represent an applicant in proceedings before the Court under section 45, the Ombudsman shall have regard to—
- 10 (a) the importance of the principle involved in the matter under review;
  - (b) the likelihood that the proceedings will establish a precedent in future proceedings;
  - (c) the financial means of the applicant;
  - (d) the applicant's prospect of success; and
  - (e) the reasonableness of the decision under review.

## PART VII.

### 15 REVIEW OF DECISIONS.

#### **Internal review.**

58. (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—
- 20 (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, whether
  - 25 or not the charge has already been paid by the applicant,

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.

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(2) Subject to subsection (3), where an application for a review of a decision is made to the principal officer in accordance with subsection (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorised by him to conduct such reviews to review  
5 the decision and make a fresh decision.

(3) Subsection (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 provisions of access to a document upon a request that is, under subsection 60 (1) or (3), to be  
10 deemed to have been given.

(4) The provisions of section 29 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.

#### **Appeal to Supreme Court.**

15 59. (1) Subject to this section, an applicant may appeal to the Administrative Division of the Supreme Court 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;
- 20 (b) a decision refusing to allow a further period for making an application under subsection 58 (1) for a review of a decision;
- (c) a decision referred to in section 31;
- (d) a decision under paragraph 14 (2) (a) not to specify a document in a statement;
- 25 (e) 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, whether or not the charge has already been paid by the applicant.

(2) Subject to subsection (3), where, in relation to a decision referred to in paragraph (1) (a) or (c), a person is or has been entitled to apply  
30 under section 58 for a review of the decision, that person is not entitled to appeal under subsection (1) in relation to that decision, but may appeal in respect of the decision made on such a review.

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(3) Subsection (2) does not prevent an appeal to the Court in respect of a decision where—

- (a) the person concerned has applied under section 58 for a review of the decision;
- 5 (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 Court may be treated by the Court as having been made within the time allowed by subsection (4) if it appears to the  
10 Court that there was no unreasonable delay in making the application to the Court.

(4) The period within which (subject to any extension granted by the Court) an application under subsection (1) of this section is to be made in respect of a decision is—

- 15 (a) except where paragraph (b) or (c) applies—the period commencing on the day in which notice of the decision was given to the applicant in accordance with section 29 and ending on the sixtieth day after that day;
- 20 (b) where the decision is a decision that is to be deemed by subsection 60 (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
- 25 (c) where subsection 53 (4) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that subsection and ending on the sixtieth day after that day.

**Appeal to Court where decision delayed.**

60. (1) Subject to this section, where—

- 30 (a) a request has been made to an agency or Minister in accordance with section 23;

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(b) the period of 21 days or such other period as is applicable by virtue of the application of subsection 23 (2) has elapsed since the day on which the request was received by or on behalf of the agency or Minister; and

5 (c) notice 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 appeal to be made to the Court under section 59, be deemed to have made, on the last day of that period a decision refusing to grant access  
10 to the document.

(2) Where a complaint is made to the Ombudsman under the Ombudsman Act, 1974 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 subsection (1)), an appeal  
15 to the Court under section 59 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 15 or 29 of the Ombudsman Act, 1974.

(3) Where such a complaint is made before the expiration of the  
20 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  
25 the case requires, shall, for the purpose of enabling an appeal to be made to the Court under section 59, be deemed to have made, on the day on which the certificate is granted, a decision refusing to grant access to the document.

(4) Where, after an appeal has been made to the Court by virtue of  
30 this section but before the Court 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 Court may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.

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(5) Before dealing further with an application made by virtue of this section, the Court may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the request.

(6) The Court may make an order under subsection (5) subject to such conditions as the Court thinks fit, including a condition that if a decision is made during the further time to grant access to a document—

- (a) any charge that, under the regulations, is required to be paid before access is granted shall be reduced or waived; and
- (b) the applicant may apply to the Court for an order that the costs of the proceedings before the Court incurred by the applicant shall be paid by the State.

**Powers of the Court.**

61. (1) The Court may, on the hearing of an appeal—

- (a) confirm or vary the decision appealed from, or substitute, or make in addition, any decision that might have been made by an agency or a Minister under this Act; or
- (b) remit the matter to the agency or Minister for reconsideration in accordance with any directions or recommendations of the Court.

(2) Subject to subsection (3), in proceedings under this Part, the Court 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 Court under this section has the same effect as a decision of the agency or Minister.

(3) Where, in proceedings under this section, it is established that a document is an exempt document, the Court does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.

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(4) Where there is in force in respect of a document that is claimed to be an exempt document under section 36 a certificate under that section, the powers of the Court do not extend to reviewing the decision to give the certificate.

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

**Defendant.**

62. For the purposes of this Part the defendant in any proceedings before the Court shall be—

- 10 (a) in the case of proceedings by virtue of section 14—the agency of which the principal officer upon whom the notice was served is an officer; and
- (b) in any other case—the agency or Minister to which or to whom the request concerned was made.

**15 Onus.**

63. (1) 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 Court should give a decision adverse to the applicant.

20 (2) In proceedings under this Part by virtue of section 14, the principal officer upon whom the notice was served has the onus of establishing that the document concerned is not a document as described in subsection 11 (1) or 13 (1).

**Production and inspection of exempt documents.**

25 64. (1) Where there are proceedings before the Court under this Act in relation to a document that is claimed to be an exempt document, the Court may order the defendant to produce the document to the Court for inspection by members of the Court as constituted for the proceedings for



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the purpose of enabling the Court to determine whether the document is an exempt document or 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.

5           (2) Subject to subsection (3) and to any order made by the Court under section 61, the Court shall do all things necessary to ensure that any document produced to the Court under subsection (1), or the contents of that document, is not disclosed to any person other than a member of the court as constituted for the proceedings, or a member of  
10 the staff of the Court in the course of the performance of his duties as a member of that staff, and to ensure the return of the document to the defendant at the conclusion of the proceedings.

          (3) The Court may make such orders as it thinks necessary having regard to the nature of the proceedings, including an order that the contents  
15 of a document produced to the Court under subsection (1) be disclosed to a qualified legal practitioner representing the applicant, but in making such an order the Court shall be guided by the principle that the contents of such a document should not normally be disclosed except in accordance with an order of the Court under section 61.

20           (4) The Court 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 exempt matter, or information of the kind referred to in subsection 28 (1).

          (5) Subsection (1) applies in relation to a document in the possession  
25 of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in that subsection to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.

**Costs of proceedings.**

30   65. (1) Subject to this section, in any proceedings before the Court arising under this Act the costs incurred by a party shall be borne by that party.

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**(2) Where the Court makes an order—**

- (a) under subsection 61, not being an order confirming the decision appealed from; or
- 5 (b) under paragraph 60 (7) (b) allowing an applicant to apply to the Court for an order that the costs of the proceedings before the Court incurred by the applicant shall be paid by the State, and the applicant has made such an application,

the Court may further order that the costs of the proceedings incurred by the applicant, or a part of those costs, shall be paid by the State.

**10 Waiver of charges by Court.**

**66.** Where the Court makes an order under section 61, not being an order confirming the decision appealed from, the Court may, as part of its order, direct that any charge that, under the regulations, is required to be paid before access is granted shall be reduced or waived.

**15 Evidence of breach of duty or misconduct by an officer.**

**67.** Where the Court, at the completion of a proceeding under this Act, is of opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in the administration of this Act and that the evidence is, in all the circumstances, of  
20 sufficient force to justify it in doing so, the Court shall bring the evidence to the notice of—

- (a) if the person is the principal officer of an agency—the responsible Minister of that agency; or
- 25 (b) if the person is an officer of an agency, but not the principal officer of that agency—the principal officer of that agency.

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## PART VIII.

## MISCELLANEOUS.

**Protection against certain actions.**

- 5       **68. (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 authorised by a Minister, or by an officer having authority, in accordance with section 27 or 58, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,
- 10 no action for defamation or breach of confidence lies against the State, an agency, a Minister or an officer by reason of the authorising or giving of the access.
- (2)** Where access has been given to a document under this Act, no action for defamation or breach of confidence in respect of any publication  
15 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.
- (3)** Where access has been given to a document in accordance with a request made under this Act, and the document became a document of an  
20 agency or an official document of a Minister before the date of commencement of this Act, no action for defamation lies against a person who was a party to the preparation of the document.
- (4)** The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an  
25 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  
30 person to whom access is given, of any act comprised within the copyright in—
    - (i) any literary, dramatic, musical or artistic work;

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- (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
- (iii) a published edition of a literary, dramatic, musical or artistic work,

5 contained in the document.

(5) Expressions used in paragraph (4) (b) have the same meaning as in the Commonwealth Copyright Act, 1968.

**Protection in respect of offences.**

69. Where access has been given to a document and—

- 10 (a) the access was required by this Act to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority, in accordance with section 27 or 58, to make decisions in respect of requests in the *bona fide* belief that the access was required by this Act to be given;

15 neither the person authorizing the access nor any other 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.

**Protection for officers disclosing non-exempt documents.**

70. Any enactment that—

- 20 (a) makes it an offence for an officer to disclose a document or to divulge a document or to divulge information, without authority from some other officer; or
- (b) provides for action, whether disciplinary or otherwise, to be taken against an officer who discloses a document or divulges information,
- 25 without authority from some other officer,

shall not apply where an officer has disclosed a document that is not an exempt document under this Act or has divulged information that is not exempt matter under this Act.

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**Reports to Parliament.**

71. (1) The Minister shall, as soon as practicable after the end of each year ending on 30th 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  
5 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  
10 requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

(3) Without limiting the generality of subsection (1) or the kinds of information which an agency or a Minister might be required, in pursuance of subsection (2), to furnish to the Minister administering this Act,  
15 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—
- 20 (i) the number of requests under section 23 for access to documents received during the year;
  - (ii) the number of decisions made during the year (other than decisions made under section 58) refusing to grant access to documents in relation to which requests have, at any time, been received;
  - 25 (iii) the number of decisions made during the year (other than decisions made under section 58) deferring the provision of access to documents in relation to which requests have, at any time, been received;
  - 30 (iv) in respect of sections 15, 16, 19, 24, 26 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;
  - 35 (v) particulars of the classification and designation of officers authorized by a responsible Minister or a principal officer in accordance with section 27 to make decisions in respect of requests;

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- (vi) the number of applications made during the year for the review of decisions under section 58 and particulars of the results of such reviews;
- 5 (vii) the number of appeals made during the year to the Court for the review of decisions and particulars of the results of such appeals;
- (viii) particulars of the total charges collected during the year in dealing with requests, whenever received;
- 10 (ix) particulars of changes in administrative procedures occasioned by the need to comply with the obligations imposed by this Act;
- (x) the average time taken during the year to make decisions in respect of requests for access to documents;
- 15 (xi) particulars of extra staff positions approved, during the year in consequence of the imposition of the obligations under this Act;
- (xii) the number of notices served upon the principal officer of the agency under subsection 14 (1), and the number of decisions by the principal officer which were adverse to the applicant's claim; and
- 20 (xiii) particulars of any disciplinary action taken against an officer in respect of the administration of 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
- 25 (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.
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(4) The first report by the Minister under subsection (1) shall include particulars of the extent to which the responsible Minister of each agency and each agency, has, respectively, complied with sections 10 and 11 of this Act.

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*Freedom of Information.*

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**Regulations.**

72. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out  
5 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  
10 (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 subsection (1), regulations  
15 under that subsection 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  
20 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  
25 for access has been made with a view to deciding whether that document contains exempt matter, or in deleting exempt matter from a document;

(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  
30 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

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*Freedom of Information.*

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5 (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.

FIRST SCHEDULE.

10 To be prescribed by regulation pursuant to section 72.

SECOND SCHEDULE.

PART I.

To be prescribed by regulation pursuant to section 72.

PART II.

15 To be prescribed by regulation pursuant to section 72.

THIRD SCHEDULE.

To be prescribed by regulation pursuant to section 72.

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