

CONCURRENCE COPY

FREEDOM OF INFORMATION BILL, 1983

EXPLANATORY NOTE

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

The object of this Bill is to extend as far as practicable the rights of members of the public to access to information in the possession of the Government of New South Wales by—

- (a) making available to the public information about the operation of Government Departments and public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with Government Departments and public authorities are readily available to persons affected by those rules and practices; and
- (b) creating a general right of access to information in documentary form in the possession of Ministers, Government Departments and public authorities.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4 provides that the proposed Act shall bind the Crown.

Clause 5 states the object of the proposed Act.

Clause 6. Interpretation.

Clause 7 excludes matters relating to the judicial functions of a court from the operation of the proposed Act.

Clause 8 excludes matters relating to the judicial functions of a tribunal from the operation of the proposed Act.

Clause 9 and Schedule 1 provide for the exclusion of certain bodies, offices and appointments from the operation of the proposed Act.

PART II.—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION.

Clause 10 requires certain information concerning Government Departments and public authorities to be published within 12 months after the commencement of that clause and to be updated and republished each year thereafter.

Clause 11 requires certain documents concerning Government Departments and public authorities to be made available for inspection and purchase by members of the public.

Clause 12 directs that no person shall be prejudiced by reason of the application of an interpretation, rule, guideline, practice or precedent relating to the functions of a Government Department or public authority if that person was unaware of that interpretation, rule, guideline, practice or precedent and that interpretation, rule, guideline, practice or precedent was required to be made available, but was not in fact made available, for inspection and purchase.

PART III.—ACCESS TO DOCUMENTS.

Clause 13 provides that, subject to the proposed Act, every person has a legally enforceable right to obtain access to the documents of a Government Department or a public authority and to the official documents of a Minister.

Clause 14 provides that a person is not entitled to obtain access to documents—

- (a) which are otherwise available, such as—
 - (i) in the form of a register kept under an Act; or
 - (ii) in the form of documents published by a Government Department or public authority in the course of the exercise of its functions; or
- (b) which have come into the possession of a Government Department or public authority more than 5 years before the date of commencement of that clause.

Clause 15 contains provisions relating to documents that are in the custody of the State Library, the Australian Museum, the Museum of Applied Arts and Sciences, the Archives Authority and such other bodies as may be prescribed under the proposed Act.

Clause 16 provides that the proposed Act is not intended to prevent or discourage the publication of documents, or the giving of access to documents, otherwise than in accordance with the requirements of the proposed Act.

Clause 17 describes the procedures for making a request to a Government Department, a public authority or a Minister for the obtaining of access to a document.

Clause 18 provides for the transfer of a request to the appropriate Government Department or public authority in cases where the request has been directed to the wrong Government Department or public authority.

Clause 19 provides for the situation where the information the subject of a request is not in documentary form but exists in an information retrieval system or some other non-documentary form.

Clause 20 requires access to a document to be given to a person who requests access to the document.

Clause 21 provides that any decision relating to the provision of access to a document should be notified to the person requesting access as soon as practicable, but in any case not later than 45 days, after the request was made.

Clause 22 enables access to a document to be given in any of several forms.

Clause 23 enables access to a document to be deferred pending the presentation of the document to Parliament or the release of the document to the Press.

Clause 24 provides that where a document the subject of a request for access is an exempt document within the meaning of the proposed Act, then, if it is practicable to do so, access shall be given to a copy of the document from which has been deleted the matter by virtue of which the document is an exempt document.

Clause 25 specifies which persons may make decisions in respect of requests for access to documents.

Clause 26 provides that a request for access to all documents that contain information of a specified kind may be refused if compliance with the request would interfere unreasonably with the operations of the Government Department or public authority which would otherwise be required to give access to those documents.

Clause 27 enables a Government Department or public authority to refuse to confirm or deny the existence of a document if information concerning the existence of the document, if itself contained in a document, would render that document an exempt document.

Clause 28 requires certain information to be given to the person by whom a request for access to a document has been made in cases where it is decided that access to that document is to be refused.

Clause 29 requires a person by whom a request for access to a document has been made to be notified of any fee payable by that person in respect of the request.

PART IV.—EXEMPT DOCUMENTS.

Clause 30. Interpretation.

Clause 31 provides that certain documents concerning relations between New South Wales and the Commonwealth, or between New South Wales and another State, are exempt documents for the purposes of the proposed Act.

Clause 32 provides that certain documents concerning the workings of Cabinet are exempt documents for the purposes of the proposed Act.

Clause 33 provides that certain documents concerning the workings of the Executive Council are exempt documents for the purposes of the proposed Act.

Clause 34 provides that certain documents concerning the deliberative processes involved in the functions of a Government Department, of a public authority or of the Government are exempt documents for the purposes of the proposed Act.

Clause 35 provides that certain documents concerning law enforcement or the protection of public safety are exempt documents for the purposes of the proposed Act.

Clause 36 and Schedule 2 provide that documents that are exempt documents under Freedom of Information legislation of the Commonwealth or of another State are exempt documents for the purposes of the proposed Act.

Clause 37 provides that certain documents concerning the financial or property interests of the Crown in right of New South Wales are exempt documents for the purposes of the proposed Act.

Clause 38 provides that documents concerning certain operations of Government Departments and public authorities (that is, documents relating to tests, examinations, audits, personnel management and assessment, efficient conduct of operations and industrial relations) are exempt documents for the purposes of the proposed Act.

Clause 39 provides that certain documents affecting personal privacy are exempt documents for the purposes of the proposed Act.

Clause 40 provides that documents which are privileged from production in legal proceedings are exempt documents for the purposes of the proposed Act.

Clause 41 provides that documents which contain information given in confidence are exempt documents for the purposes of the proposed Act.

Clause 42 provides that certain documents which contain information given by business, commercial and financial undertakings are exempt documents for the purposes of the proposed Act.

Clause 43 provides that documents the subject of secrecy provisions under other New South Wales legislation are exempt documents for the purposes of the proposed Act.

Clause 44 provides that documents whose publication would be in contempt of court, in breach of an order or direction given by a Royal Commission or a Special Commission of Inquiry or an infringement of the privilege of Parliament are exempt documents for the purposes of the proposed Act.

Clause 45 provides that certain documents relating to the functions of the Ministerial Council for Companies and Securities or to the functions of the National Companies and Securities Commission are exempt documents for the purposes of the proposed Act.

PART V.—AMENDMENT OF PERSONAL RECORDS.

Clause 46 enables a person to request that a document relating to the person be amended where the person claims that the document is incomplete, incorrect, out of date or misleading.

Clause 47 provides for the form in which a request referred to in clause 46 should be made.

Clause 48 outlines the procedures to be followed where a request referred to in clause 46 has been made.

Clause 49 contains provisions relating to the review of decisions made in relation to requests referred to in clause 46.

Clause 50 provides that nothing in Part V of the proposed Act is intended to prevent or discourage Government Departments, public authorities and Ministers from giving particulars of notations made to certain records to persons to whom information in those records was furnished before the commencement of that clause.

PART VI.—REVIEW OF DECISIONS.

Clause 51. Interpretation.

Clause 52 contains provisions relating to the review by a Government Department or a public authority of decisions that have been made by that Department or authority.

Clause 53 specifies grounds upon which an application may be made to the District Court for review of a decision made under the proposed Act.

Clause 54 provides that an application may be made to the District Court in circumstances where a decision on a request has not been made within the time within which the proposed Act requires the decision to be made.

Clause 55 confers certain powers on the District Court in relation to proceedings arising under the proposed Act.

Clause 56 specifies that a Government Department, a public authority or a Minister shall be deemed to be a party to proceedings arising under the proposed Act in respect of the request or decision the subject of those proceedings.

Clause 57 places the onus of justifying a decision upon the Government Department, public authority or Minister by which or by whom the decision was made.

Clause 58 requires the District Court to ensure that documents containing exempt matter, within the meaning of the proposed Act, are not disclosed in the course of proceedings arising under the proposed Act.

Clause 59 enables the District Court to call for production of a document that is claimed to be an exempt document.

Clause 60 provides that evidence relating to certain certificates given under the proposed Act may be given by affidavit.

Clause 61 contains provisions relating to the exercise by the Ombudsman of the powers conferred on the Ombudsman by the Ombudsman Act, 1974.

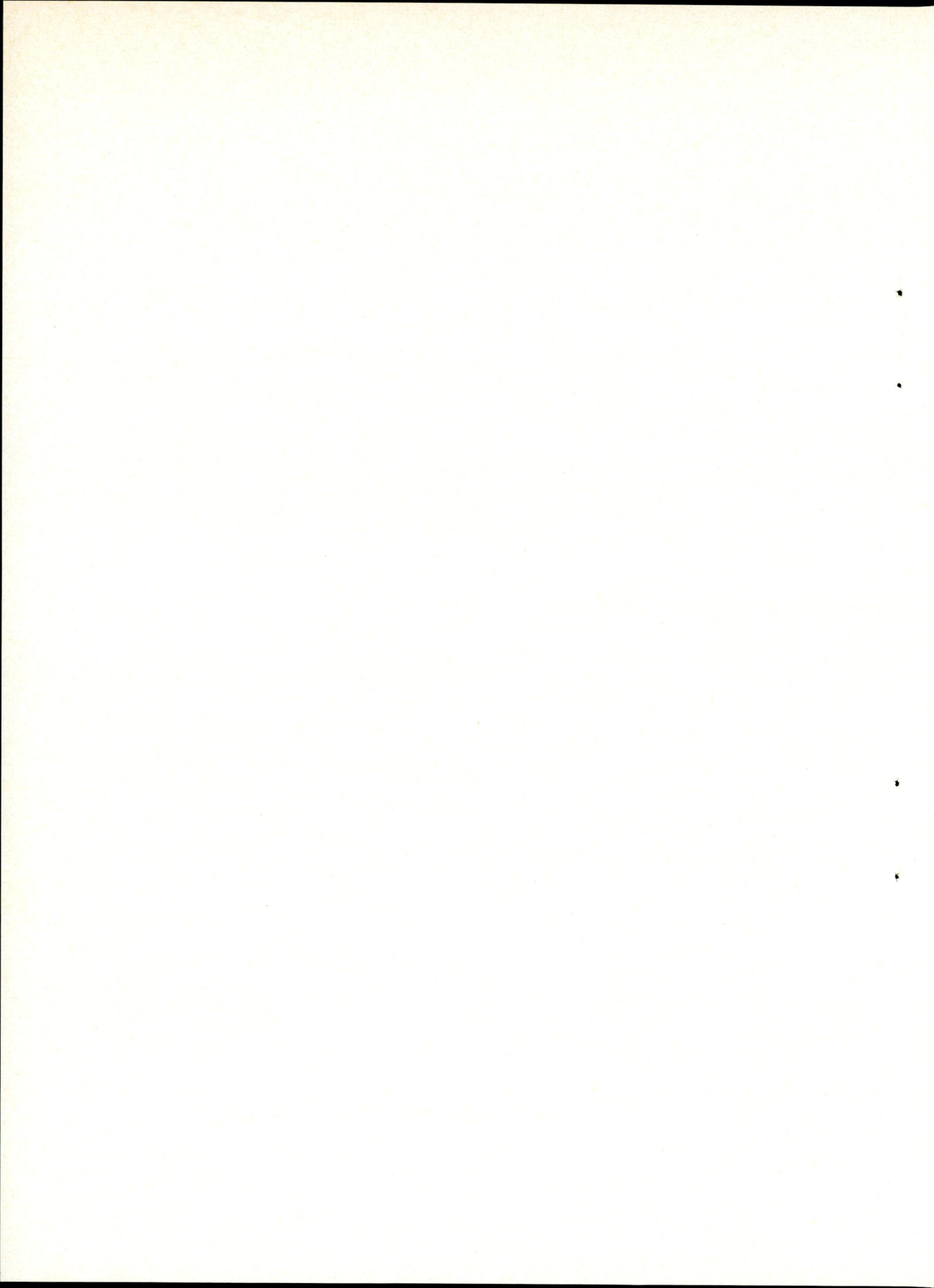
PART VII.—MISCELLANEOUS.

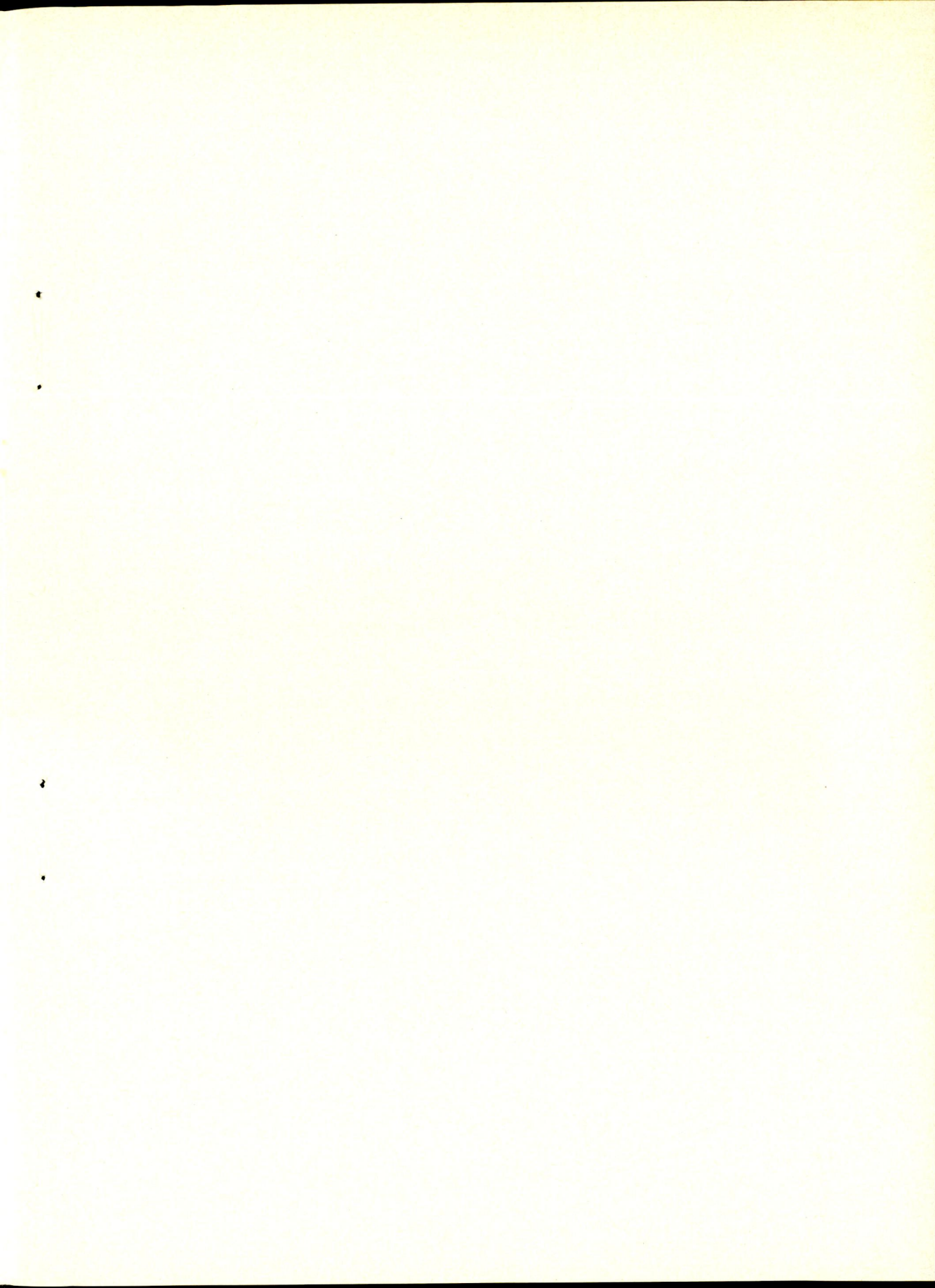
Clause 62 provides that no action for defamation or breach of confidence shall lie in respect of the disclosure of a document where disclosure of the document was required, or was bona fide believed to be required, by the proposed Act.

Clause 63 provides that no person is guilty of an offence in respect of the disclosure of a document where disclosure of the document was required, or was bona fide believed to be required, by the proposed Act.

Clause 64 requires the Minister administering the proposed Act to furnish annual reports to Parliament in relation to the administration of the proposed Act.

Clause 65 empowers the Governor to make regulations for the purposes of the proposed Act.





FREEDOM OF INFORMATION BILL, 1983

No. , 1983.

A BILL FOR

An Act to give members of the public rights of access to official documents of the Government of New South Wales and of its agencies; and for other purposes.

[MR WRAN—1 *December*, 1983.]

Freedom of Information.

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:—

5

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Freedom of Information Act, 1983".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 **Arrangement.**

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–9.

PART II.—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION
—ss. 10–12.

20 PART III.—ACCESS TO DOCUMENTS—ss. 13–29.

PART IV.—EXEMPT DOCUMENTS—ss. 30–45.

PART V.—AMENDMENT OF PERSONAL RECORDS—ss. 46–50.

PART VI.—REVIEW OF DECISIONS—ss. 51–61.

PART VII.—MISCELLANEOUS—ss. 62–65.

25 SCHEDULES.

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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. The object of this Act is to extend as far as practicable the rights of members of the public 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 operation of Government Departments and public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with Government 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, Government Departments and public authorities.

Interpretation.

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

“agency” means a Government Department or a prescribed authority;

“applicant” means a person who has made a request;

“court” means—

- (a) the Supreme Court;
- (b) the District Court;
- (c) a court of petty sessions; or
- (d) any other court, being a court which is established by or under an enactment;

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5 “document” includes any written matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;

10 “document”, in relation to an agency, means a document in the possession of the agency, whether created in the agency or received by the agency;

“enactment” means—

- (a) an Act; or
- (b) an instrument made under an Act;

15 “exempt document” means—

- (a) a document which, by virtue of a provision of Part IV, is an exempt document; or
- (b) an official document of a Minister that contains matter that does not relate to the affairs of an agency;

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

“Government Department” means a Department within the meaning of section 4 (1) of the Public Service Act, 1979;

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

25 “official document”, in relation to a Minister, means a document that is in the possession of the Minister, in the Minister’s capacity as a Minister, being a document that relates to the affairs of an agency and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from the Minister’s possession if the Minister is entitled to access to the
30 document and the document is not a document of an agency;

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“Ombudsman” means the New South Wales Ombudsman;

“prescribed authority” means—

- 5 (a) a body, whether incorporated or unincorporated, established for a public purpose by or under 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;
- 10 (iii) the Legislative Council;
- (iv) the Legislative Assembly;
- (v) a Royal Commission;
- (vi) a Special Commission of Inquiry; or
- 15 (vii) a council or county council within the meaning of the Local Government Act, 1919;
- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—
- 20 (i) a body established by the Governor or by a Minister; or
- (ii) an incorporated company or association over which a Minister is in a position to exercise direction or control;
- (c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment;
- 25 (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 a Minister otherwise than under an enactment;
- 30 (e) the Police Force of New South Wales; or
- (f) a Teaching Service within the meaning of section 4 (1) of the Education Commission Act, 1980;

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“principal officer” means—

(a) in relation to a Government Department—the person holding, or performing the duties of, the position of Department Head in relation to that Department; and

5 (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

10 (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 that person is present;

“request” means a request made in accordance with section 17;

15 “responsible Minister” means—

(a) in relation to a Government Department—the Minister responsible for that Department;

20 (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of “prescribed authority”—the Minister administering the enactment by or under which the prescribed authority is established;

(c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering the enactment by which the office is established;

25 (d) in relation to the Police Force of New South Wales—the Minister for Police and Emergency Services;

(e) in relation to a Teaching Service within the meaning of section 4 (1) of the Education Commission Act, 1980—the Minister for Education; or

30 (f) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in relation to that authority,

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

“regulation” means a regulation made under this Act;

35 “State” includes Territory;

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“the Court” means the District Court;

“tribunal” means any tribunal, authority or body which is established by or under an enactment and which exercises judicial functions, and includes any prescribed tribunal, authority or body.

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

10 **(3)** A person shall not be taken to be a prescribed authority—

(a) by virtue of that person’s holding office as a member of the Legislative Council or Legislative Assembly; or

(b) by virtue of that person’s holding, or performing the duties of—

15 (i) a prescribed office;

 (ii) an office the duties of which that person performs as duties of that person’s employment as an officer of an agency;

 (iii) an office of member of a body, being a body that is a prescribed authority;

 (iv) an office established by an enactment for the purposes of a

20 prescribed authority; or

 (v) an office established by an enactment for the purposes of a body referred to in paragraph (a) (i)–(vii) of the definition of “prescribed authority” in subsection (1).

(4) Where an agency is abolished, then, for the purposes of this Act—

25 (a) if the functions of the agency are acquired by another agency—any request made to the firstmentioned agency shall be deemed to have been made to, and any decision made by the firstmentioned agency in respect of a request made to it shall be deemed to have been made by, the other agency;

30 (b) if the functions of the agency are acquired by more than 1 other agency—any request made to the firstmentioned agency shall be deemed to have been made to, and any decision made by the firstmentioned agency in respect of a request made to it shall be

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deemed to have been made by, whichever of those other agencies has acquired the functions of the firstmentioned agency to which the document the subject of the request most closely relates; and

- 5 (c) if the documents of the agency are deposited with the Archives Authority of New South Wales—any request made to the agency shall be deemed to have been made to, and any decision made by the agency in respect of a request made by it shall be deemed to have been made by, the agency to the functions of which the document the subject of the request most closely relates.

10 (5) If an agency to which a request is deemed to have been made, or by which a decision upon a request is deemed to have been made, was not itself in existence at the time when the request or decision was so deemed to have been made, then, for the purposes only of dealing with that request or decision under this Act, that agency shall be deemed to have been in
15 existence at that time.

Act not to apply to judicial functions of courts.

7. For the purposes of this Act—

- 20 (a) in relation to judicial functions, neither a court nor a person who is the holder of an office pertaining to a court, in that person's capacity as the holder of that office, shall be taken to be a prescribed authority or included in a Government Department; and
- 25 (b) in relation to those matters which relate to the judicial functions of a court, neither a registry or other office of the court nor the members of the staff of such a registry or other office, in their capacity as members of that staff, shall be taken to be a prescribed authority or included in a Government Department.

Act not to apply to judicial functions of tribunals.

8. For the purposes of this Act—

- 30 (a) in relation to judicial functions, neither a tribunal nor a person who is the holder of an office pertaining to a tribunal, in that person's capacity as the holder of that office, shall be taken to be a prescribed authority or included in a Government Department; and

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- 5 (b) in relation to those matters which relate to the judicial functions of a tribunal, neither a registry or other office of the tribunal nor the members of the staff of such a registry or other office, in their capacity as members of that staff, shall be taken to be a prescribed authority or included in a Government Department.

Exemption of certain bodies, etc., from operation of Act.

9. (1) Any body specified in Schedule 1 is, to the extent specified in that Schedule in relation to that body, exempt from the operation of this Act.

- 10 (2) Any person holding or performing the duties of an office or appointment specified in Schedule 1 is, to the extent specified in that Schedule in relation to that office or appointment, exempt from the operation of this Act.

PART II.**PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION.****15 Publication of information concerning functions and documents of agencies.**

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

- (a) cause to be published, as soon as practicable, but in any case not later than 12 months, after the commencement of this section, in a form approved by the Minister administering this Act—
- 20 (i) a statement setting out particulars of the organisation 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;
- 25 (ii) a statement setting out particulars of any arrangements that exist for bodies or persons (other than other agencies or Ministers) to participate, either through consultative procedures or 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;

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- 5 (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 section 11 (1) (b) or (c) and categories of documents, if any, not being documents as so referred to, as are customarily made available to the public, otherwise than under this Act, free of charge upon request;
- 10 (iv) a statement of particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain access to the documents of the agency; and
- 15 (v) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents should be directed; and
- 20 (b) during the year commencing on 1st January next following the publication, in respect of the agency, of the statement under paragraph (a) (i), (ii), (iii), (iv) or (v) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.
- 25 **(2)** In approving a form under subsection (1) (a), the Minister administering this Act shall have regard, among other things, to the need to assist members of the public to exercise effectively their rights under this Act.
- 30 **(3)** The information to be published in accordance with this section may be published by including it in the publication known as the Freedom of Information Directory.
- (4)** Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

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

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

- (a) documents containing interpretations, rules, guidelines, practices or precedents;
- 15 (b) documents containing particulars of such a scheme, not being particulars contained in an enactment;
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme; or
- 20 (d) documents describing the procedures to be followed in investigating breaches or evasions, or suspected 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 that or any other agency.

(2) The principal officer of an agency shall—

- 25 (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;
- 30 (b) as soon as practicable, but in any case not later than 12 months, after the commencement of this section, cause to be published in the Gazette a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies of those documents may be inspected and may be
35 purchased; and

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(c) as soon as practicable, but in any case not later than 12 months, after the publication of the last preceding statement published under paragraph (b), or under this paragraph, cause to be published in the Gazette a statement bringing up to date the information contained in that last preceding statement.

5 (3) The principal officer of an agency is not required to comply fully with subsection (2) (a) before the expiration of 12 months after the commencement of this section, but shall, before that time, comply with that paragraph as far as is practicable.

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

(5) The report of the Minister under section 64 in respect of a year shall include a statement concerning compliance by agencies with the requirements of this section during that year.

20 (6) Where a person makes a request to inspect or to purchase a document of an agency concerning a particular enactment or scheme, being a document of a kind to which this section applies, the principal officer of the agency shall take all reasonable steps to ensure that the attention of that person is drawn to any document of the agency concerning that enactment
25 or scheme that is relevant to the request and that has become a document to which this section applies since the last occasion on which a statement in respect of documents of the agency was published in the Gazette in pursuance of subsection (2) (b) or (c).

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

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Unpublished documents not to prejudice public.

12. (1) If a document required to be made available in accordance with section 11, being a document containing an interpretation, rule, guideline, practice or precedent relating to a function of an agency, was not made available, or was not specified in a statement in the Gazette, as referred to in that section, before the time at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to that person (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that person, if not aware of that interpretation, rule, guideline, practice or precedent at that time, shall not be subject to any prejudice by reason only of the application of that interpretation, rule, guideline, practice or precedent in relation to the thing done or omitted to be done if that person could lawfully have avoided that prejudice had that person been aware of that interpretation, rule, guideline, practice or precedent.

(2) The reference in subsection (1) to the time at which a person did, or omitted to do, any act or thing relevant to the performance in relation to that person of a function of an agency does not include a reference to a time earlier than—

- 20 (a) the expiration of the period of 12 months referred to in section 11 (2) (b); or
- (b) the expiration of the period of 12 months after the day on which the agency came into existence,
- whichever is the later.

25

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

13. Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to—

- 30 (a) a document of an agency, other than an exempt document; or
- (b) an official document of a Minister, other than an exempt document.

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Part not to apply to certain documents.

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

(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; or

(b) a document that is available for purchase by the public in accordance with arrangements made by an agency.

(2) A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of an agency or an official document of a Minister more than 5 years before the date of commencement of this section unless the document or that part of the document is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which that person has lawfully had access.

(3) Regulations may be made for the modification of subsection (2) so as to enable a person to obtain access under this Part to documents to which, but for the making of those regulations, that person would not be entitled to access under this Part by reason of that subsection.

(4) References in subsection (3) to subsection (2) shall be construed as including references to subsection (2) as previously modified in pursuance of regulations referred to in subsection (3).

Documents in certain institutions.

15. (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being in a collection of library material in the custody of—

(a) the State Library of New South Wales;

(b) the Australian Museum;

(c) the Museum of Applied Arts and Sciences;

(d) the Archives Authority of New South Wales; or

(e) any other prescribed body,

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

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(2) For the purposes of this Act, a document that has been deposited in a collection referred to in subsection (1) by an agency shall be deemed to be a document of an agency and to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

(3) Notwithstanding subsections (1) and (2), records of a Royal Commission or a Special Commission of Inquiry that are in the custody of the Archives Authority of New South Wales shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Minister administering the Royal Commissions Act, 1923, or the Special Commissions of Inquiry Act, 1983, as the case may be.

Access to documents apart from Act.

16. 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.

17. (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 the agency or Minister concerned to identify the document.

(3) Where a person—

- 25 (a) has indicated to an agency that that person wishes to make a request to the 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.

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(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 firstmentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

5 **Transfer of requests.**

18. (1) Where a request is made to an agency for access to a document and—

- (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
- 10 (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made,

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

15 (2) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall inform the applicant 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.

20 (3) 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 to have been received at the time at which the transfer was made, or 14 days after the date of the request, whichever first occurs.

(4) In this section, “agency” includes Minister.

Requests involving use of computers, etc.

25 19. (1) Where—

- (a) a request (including a request of the kind described in section 26 (1) (a)) is made to an agency;

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- (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
- 5 (c) the agency could produce a written document containing the information in discrete form by—
- (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
- 10 (ii) the making of a transcript from a sound recording held in the agency,
- the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

15 **(2)** An agency is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the agency.

(3) In this section, “agency” includes Minister.

Access to documents to be given on request.

- 20 **20. (1)** Subject to this Act, where—
- (a) a request is made 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,
- 25 the person shall be given access to the document in accordance with this Act.

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

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Time within which formal requests to be decided.

5 **21.** 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 45 days, after the day on which the request was received by or on behalf of the agency or Minister.

Forms of access.

22. (1) Access to a document may be given to a person in 1 or more of the following forms:—

- (a) a reasonable opportunity to inspect the document;
- 10 (b) provision by the agency or Minister concerned of a copy of the document;
- (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
- 15 (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or
- 20 Minister concerned of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and section 24, where an applicant has requested access in a particular form, access shall be given in that form.

(3) If the giving of access in the form requested by an applicant—

- 25 (a) would interfere unreasonably with the operations of the agency concerned, or the performance by the Minister concerned of the Minister's functions, as the case may be;
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not
- 30 be appropriate; or

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(c) would involve an infringement of copyright (other than copyright owned by the Crown in right of New South Wales or by an agency) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency,

5 access in that form may be refused but, if so refused, shall be given in another form.

(4) Subject to section 19 (1), where a person requests access to a document in a particular form and, for a reason specified in subsection (3), access in that form is refused but given in another form, the applicant shall
10 not be required to pay a charge in respect of the giving of access to the document that is greater than the charge that the applicant would have been required to pay if access had been given in the form requested.

Deferment of access.

23. (1) An agency which, or a Minister who, receives a request may
15 defer giving access to the document concerned if the document has been prepared—

(a) for presentation to Parliament;

(b) for release to the Press; or

(c) solely for inclusion, in the same or in an amended form, in a
20 document to be prepared for a purpose specified in paragraph (a) or (b),

and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.

(2) Where the giving of access to a document is deferred in
25 accordance with subsection (1), the agency or Minister concerned shall, in informing the applicant of the reasons for the decision to defer giving access to the document, indicate, as far as practicable, the period for which the deferment will operate.

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Deletion of exempt matter.**24. Where—**

- 5 (a) a decision is made to refuse access to a document of an agency or an official document of a Minister on the ground that the document is an exempt document;
- (b) it is practicable for the agency or Minister to give access to a copy of the document with such deletions as to make the copy not an exempt document; and
- 10 (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,
- the agency or Minister shall give access to such a copy of the document.

Decisions to be made by authorised persons.

15 **25. (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 by 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 that officer in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

20 **(2)** A decision in respect of a request made to a court may be made on behalf of the court by the principal officer of the court or, subject to the regulations, by an officer of the court acting within the scope of authority exercisable by that officer in accordance with arrangements approved by the principal officer of the court.

(3) In this section, "court" includes tribunal.

25 Requests may be refused in certain cases.**26. (1) Where—**

- (a) a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to specified subject-matter; and

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5 (b) the agency or Minister dealing with the request is satisfied that the work involved in giving access to all the documents to which the request relates would interfere unreasonably with the operations of the agency or with the performance by the Minister of the Minister's functions, having regard to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the agency or the office of the Minister,

10 the agency or Minister may refuse access to the documents without having caused that work to be undertaken.

(2) Where, in respect of a request of a kind referred to in subsection (1) (a), it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents and that no obligation would arise under 15 section 24 in relation to any of those documents to give access to a copy of the document with such deletions as are referred to in that section, the agency or Minister concerned may refuse access to the documents without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions 20 of this Act under which each such document is claimed to be an exempt document.

(3) An agency or Minister shall not refuse access to a document—

(a) on the ground that the request does not comply with section 17; or

(b) pursuant to subsection (1),

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

Information as to existence of certain documents.

30 27. (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 lastmentioned document to be an exempt document by virtue of section 32, 33, 35 or 36.

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(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 agency or Minister, as the case may be, neither confirms nor denies the
5 existence, as a document of the agency or an official document of the Minister, of such a document, but that, assuming the existence of such a document, it would be an exempt document under section 32, 33, 35 or 36 and, where such a notice is given—

10 (a) section 28 applies as if the decision to give such a notice were a decision referred to in that section; and

(b) the decision shall, for the purposes of Part VI, be deemed to be a decision refusing access to the document in accordance with the request for the reason that the document would, if it existed, be an exempt document under section 32, 33, 35 or 36, as the case
15 may be.

Reasons and other particulars of decisions to be given.

28. (1) Where, in relation to a request for access to a document of an agency or an official document of a Minister, a decision is made under this Part that the applicant is not entitled to access to the document in accordance
20 with the request or that the giving of access to the document be deferred, the agency or Minister shall cause the applicant to be given notice in writing of the decision, and the notice shall—

25 (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;

(b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision;

30 (c) where access is given to a document in accordance with section 24, state that the document is a copy of a document from which exempt matter has been deleted; and

(d) inform the applicant of—

(i) the applicant's rights under this Act to apply for a review of the decision;

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- (ii) the person or body to whom or to which an application for such a review should be made; and
 - (iii) the period within which an application for such a review should be made.
- 5 **(2)** In a notice under subsection (1), an agency or Minister—
- (a) is not required to include 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; and
 - (b) may state the decision in terms which neither confirm nor deny the
- 10 existence of any document which, on the grounds specified in section 32, 33, 35 or 36, would be an exempt document.

Persons to be notified of liability to pay charges.

29. Where, in accordance with the regulations, an agency or Minister makes a decision that an applicant is liable to pay a charge in respect of a request for access to a document or in respect of the giving 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.

20

PART IV.**EXEMPT DOCUMENTS.****Interpretation.**

30. A provision of this Part by virtue of which documents referred to in the provision are exempt documents—
- 25 (a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents; and

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- (b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

Documents affecting relations with the Commonwealth, etc.

5 **31. (1)** A document is an exempt document if disclosure of the document under this Act—

(a) would prejudice relations between New South Wales and the Commonwealth or between New South Wales and another State; or

10 (b) would disclose information or matter communicated in confidence by or on behalf of the Government of another country, of the Commonwealth or of another State to the Government of New South Wales or to a person receiving the communication on behalf of the Government of New South Wales.

15 **(2)** In deciding whether a document is an exempt document by operation of subsection (1), an agency or Minister may take account of whether the document is the subject of an arrangement entered into between New South Wales and the Commonwealth, or between New South Wales and another State, with regard to consultation under this section and of any other consideration or considerations which, in the opinion of the agency
20 or Minister, is or are relevant.

(3) Prior to deciding whether a document the subject of an arrangement referred to in subsection (2) is an exempt document by operation of subsection (1), the agency or Minister concerned shall notify the Commonwealth or such State or States as is or are party to the arrangement,
25 as the case may be, that the agency or Minister has received a request for access to the document and shall—

- (a) seek the view of the Commonwealth or State or States concerned, as the case may be, as to whether access to the document should be given;

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- 5 (b) notify the Commonwealth or the State or States concerned, as the case may be, where the agency or Minister, after consultation, decides to give access to the document and, in such a case, notify the Commonwealth or State or States concerned, as the case may be, of the right of review provided by section 53 in respect of a decision to give access to the document; and
- 10 (c) defer giving access to the document until after the expiration of the period within which an application for such a review may be made or, where such an application is made, until after the application has been finally determined.

Cabinet documents.

32. (1) A document is an exempt document if it is—

- 15 (a) a document that has been submitted to Cabinet for its consideration, or is proposed by a Minister to be so submitted, being a document that has been brought into existence for the purpose of submission for consideration by Cabinet;
- (b) an official record of Cabinet;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- 20 (d) a document the disclosure of which under this Act would involve the disclosure of any deliberation or decision of Cabinet.

(2) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the Secretary, certifying that a document is of a kind referred to in a paragraph 25 of subsection (1) establishes conclusively that it is an exempt document of that kind.

(3) Where a document is a document referred to in subsection (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect 30 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.

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(4) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be of a kind referred to in a paragraph of subsection (1) establishes
5 conclusively that, if such a document exists, it is an exempt document of that kind.

(5) Where a certificate in accordance with subsection (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the
10 request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of subsection (1) that is specified in the certificate.

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

15 **Executive Council documents.**

33. (1) A document is an exempt document if it is—

- (a) a document that has been submitted to the Executive Council for its consideration, or is proposed by a Minister to be so submitted, being a document that has been brought into existence for the
20 purpose of submission for consideration by the Executive Council;
- (b) an official record of the Executive Council;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which under this Act would involve
25 the disclosure of any deliberation or advice of the Executive Council, other than a document by which an act of the Governor has been officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the
30 Secretary, certifying that a document is of a kind referred to in a paragraph of subsection (1) establishes conclusively that it is an exempt document of that kind.

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(3) Where a document is a document referred to in subsection (1) (c) or (d) by reason only of 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
5 as containing the matter by reason of which the certificate is given.

(4) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be of a kind referred to in a paragraph of subsection (1) establishes
10 conclusively that, if such a document exists, it is an exempt document of that kind.

(5) Where a certificate in accordance with subsection (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the
15 request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of subsection (1) that is specified in the certificate.

Internal working documents.

34. (1) Subject to this section, a document is an exempt document if
20 it is a document the disclosure of which under this Act would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers, or an officer and a Minister, in the course of, or for the purpose of, the deliberative processes involved in the functions
25 of an agency or Minister or of the Government.

(2) In the case of a document of the kind referred to in section 11 (1), the matter referred to in subsection (1) does not include matter that is provided for the use of, or may be used for, the purpose of making decisions or recommendations, or enforcing enactments or schemes, referred
30 to in section 11 (1).

(3) 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 relevant notice under section 28 shall state the considerations on which the decision is based.

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

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

- 5 (a) prejudice the conduct of an investigation of a breach, or suspected breach, of the law or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
- 10 (c) endanger the life or physical safety of any person.

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

- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- 15 (b) disclose lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions, or suspected breaches or evasions, of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- 20 (c) prejudice the maintenance or enforcement of lawful methods of the protection of public safety.

(3) In subsections (1) and (2), “law” includes law of the Commonwealth or of another State.

(4) For the purposes of this Act, a certificate signed by the principal
25 officer of an agency, or by a Minister, certifying that a document of the agency or an official document of the Minister, as the case may be, is of a kind referred to in subsection (1) or (2) establishes conclusively that it is an exempt document of that kind.

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(5) Where a document is a document referred to in subsection (1) or (2) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (4) in respect of the document shall identify that part or those parts of the document as
5 containing the matter by reason of which the certificate is given.

(6) For the purposes of this Act, a certificate signed by the principal officer of an agency, or by a Minister, certifying that a document as described in a request would, if it existed, be of a kind referred to in subsection (1) or (2) establishes conclusively that, if such a document exists, it is an exempt
10 document of that kind.

(7) Where a certificate in accordance with subsection (6) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would
15 be an exempt document referred to in subsection (1) or (2), as the case may be.

Documents affected by interstate Freedom of Information legislation.

36. (1) A document is an exempt document if it is an exempt document within the meaning of a corresponding law of the Commonwealth or of
20 another State.

(2) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the Secretary, certifying that a document is of a kind referred to in subsection (1) establishes conclusively that it is an exempt document of that kind.

25 (3) Where a document is a document referred to in subsection (1) by reason only of 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.

30 (4) For the purposes of this Act, a certificate signed by the Secretary of the Premier's Department, or by a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be of a kind referred to in subsection (1) establishes conclusively that, if such a document exists, it is an exempt document of that kind.

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(5) Where a certificate in accordance with subsection (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would
5 be an exempt document referred to in subsection (1).

(6) In this section, "corresponding law", in relation to the Commonwealth or another State, means an Act of the Parliament of the Commonwealth or of the Parliament of that other State, as the case may be, specified in Schedule 2.

10 Documents affecting financial or property interests of New South Wales.

37. A document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Crown in right of New South Wales or of an agency.

Documents concerning certain operations of agencies.

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

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- 20 (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or
- 25 (e) have a substantial adverse effect on the conduct by or on behalf of an agency of industrial relations.

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Documents affecting personal privacy.

39. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

5 (2) Subject to subsection (4), 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.

10 (3) Where a request by a person other than a person referred to in subsection (2) is made to an agency or Minister for access to a document containing information relating to the personal affairs of any person (including a deceased person) and the agency or Minister decides to give access to the document, the agency or Minister (as the case may be) shall—

15 (a) if practicable, notify the person who is the subject of that information (or, in the case of a deceased person, that person's next-of-kin) of the decision and of the right of review provided by section 53 in respect of a decision to give access to the document; and

20 (b) defer giving access to the document until after the expiration of the period within which an application for such a review may be made or, where such an application is made, until after the application has been finally determined.

(4) 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 applicant 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 the applicant might be prejudicial to the physical or mental health or well-being of the applicant, the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to the applicant is not to be given to the applicant but is to be given instead to a legally qualified medical practitioner to be nominated by the applicant and approved by the principal officer.

35 (5) Where, but for this subsection, the principal officer of an agency to which the provisions of subsection (4) may apply would not be a legally qualified medical practitioner, the agency shall appoint a legally qualified medical practitioner to be the principal officer of the agency for the purposes of subsection (4).

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(6) 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 of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the lastmentioned document to be an exempt document by virtue of this section.

(7) Nothing in this section shall be construed so as to affect the procedures for access to adoption records contained in the Adoption of Children Act, 1965.

10 Documents subject to legal professional privilege.

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

15 (2) A document of the kind referred to in section 11 (1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 11 (1).

Documents containing material obtained in confidence.

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

Documents relating to business affairs, etc.

42. (1) A document is an exempt document if its disclosure under this Act would disclose information acquired by an agency or Minister from a business, commercial or financial undertaking, and—

- 25 (a) the information relates to trade secrets or other matters of a business, commercial or financial nature; or
- (b) the disclosure of the information under this Act would be likely to expose the undertaking to disadvantage.

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(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of subsection (1) (b), an agency or Minister may take account of any 1 or more of the following considerations:—

- 5 (a) whether the information is generally available to competitors of the undertaking;
- (b) whether the information would be exempt matter if it were generated by an agency or Minister;
- 10 (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking,
- and of any other consideration or considerations which, in the opinion of the agency or Minister, is or are relevant.

(3) Prior to deciding whether a document is an exempt document by operation of subsection (1) (b), an agency or Minister shall notify the 15 undertaking which has supplied the relevant document that the agency or Minister has received a request for access to the document and shall—

- (a) seek the undertaking's view as to whether access to the document should be given;
- 20 (b) notify the undertaking where the agency or Minister, after consultation, decides to give access to the document and, in such a case, notify the undertaking of the right of review provided by section 53 in respect of a decision to give access to the document; and
- 25 (c) defer giving access to the document until after the expiration of the period within which an application for such a review may be made or, where such an application is made, until after the application has been finally determined.

(4) A document is an exempt document if—

- (a) it contains—
- 30 (i) a trade secret of an agency; or
- (ii) in the case of an agency engaged in trade or commerce—
information of a business, commercial or financial nature,
that would, if disclosed under this Act, be likely to expose the
agency to disadvantage;

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- (b) it contains the results of scientific or technical research undertaken by an officer of an agency in that officer's capacity as an officer of that agency and—
- (i) the research could lead to a patentable invention;
 - 5 (ii) the disclosure of the results in an incomplete state under this Act would be likely to expose a business, commercial or financial undertaking to disadvantage; or
 - 10 (iii) the disclosure of the results before the completion of the research under this Act would be likely to expose the agency or the officer of the agency to disadvantage; or
- (c) it is an examination paper, a paper submitted by a student in the course of an examination, an examiner's report or similar document and the use or uses for which the document was prepared has or have not been completed.

15 Documents to which secrecy provisions of enactments apply.

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

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

- 44.** A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown—
- 25 (a) be in contempt of court;
 - (b) be contrary to an order made or direction given by a Royal Commission or a Special Commission of Inquiry or by a tribunal or other person or body having power to take evidence on oath; or
 - (c) infringe the privilege of Parliament.

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Certain documents arising out of companies and securities legislation.

45. A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—

- 5 (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, the Commonwealth or another State;
- 10 (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of that Council was officially published;
- 15 (c) a document furnished to the National Companies and Securities Commission by the Commonwealth or another State and relating solely to the functions of that Commission in relation to the law of the Commonwealth or that other State or the laws of 2 or more States; or
- 20 (d) a document, other than a document referred to in paragraph (c), that is in the possession of the National Companies and Securities Commission and relates solely to the exercise of the functions of that Commission under the law of the Commonwealth or another State or the laws of 2 or more States.

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

25 46. Where a person (in this Part referred to as the "claimant") who is an Australian citizen, or whose continued presence in Australia is not subject to any limitation as to time imposed by law, claims that a document of an agency or an official document of a Minister to which access has been given to the claimant under this Act contains information relating to the claimant's personal affairs—

- 30 (a) that is incomplete, incorrect, out of date or misleading; and

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(b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose,

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

5 Form of request for amendment of records.

47. (1) A request under section 46—

(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.

10 (2) A request under section 46 shall give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister concerned is incomplete, incorrect, out of date or misleading and shall specify the amendments that the claimant wishes to be made to that record.

15 Procedures upon request for amendment of records.

48. (1) Where an agency to which or Minister to whom a request is made under section 46 decides to amend the record of information to which the request relates, the agency or Minister may make the amendment either by altering the record or by adding an appropriate notation to the record.

20 (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 contained in the record is incomplete, incorrect, out of date or misleading; and

25 (b) in a case where the information contained in the record is claimed to be incomplete or out of date—set out such information as is required to complete or bring up to date that information.

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(3) Where a request is made to an agency or Minister under section 46, the agency or Minister shall take all reasonable steps to enable the claimant to be notified of a decision on the request as soon as practicable, but in any case not later than 30 days, after the day on which the request was received by or on behalf of the agency or Minister.

(4) Section 25 applies in relation to a decision in respect of a request made under section 46 in the same manner as that section applies in relation to a decision made under Part III.

(5) Section 28 applies in relation to a decision made under this Part refusing to amend a record in the same manner as that section applies in relation to a decision made under Part III refusing to give access to a document in accordance with a request.

Review of requests for amendment of records.

49. (1) A reference in Part VI to a request shall be construed as including a request under section 46 but, for the purposes of the application of that Part to or in relation to a request made under that section—

(a) section 52 (1) has effect as if—

(i) all the words in that subsection after the word “agency” (where secondly occurring) and before the words “the applicant” (where secondly occurring) were omitted; and

(ii) the word “applicant” (where secondly occurring) were omitted and the words “claimant, within the meaning of Part V,” inserted instead;

(b) the reference in section 53 (1) (a) to a decision refusing access to a document shall be read as a reference to a decision made under this Part refusing to amend a record;

(c) the reference in section 54 (1) to a decision refusing access to a document shall be read as a reference to a decision refusing to amend a record; and

(d) the reference in section 54 (2) to a decision to give, without deferment, access to a document shall be read as a reference to a decision to amend a record.

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(2) Where—

- (a) an agency or Minister refuses to amend a record pursuant to a request under section 46;
- (b) the claimant makes an application to the Court for a review of the decision; and
- (c) the Court affirms the decision,

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

- (d) specifying the respects in which the information contained in the record is claimed to be incomplete, incorrect, out of date or misleading; and
- (e) in a case where the information contained in the record is claimed to be incomplete or out of date—setting out such information as is claimed to be required to complete or bring up to date that information.

(4) Where a notice is given to an agency or Minister under subsection**(2)**—

- (a) the agency or Minister shall ensure that a notation as required by the notice is added to the record; and
- (b) if any information in the part of the record to which the notation relates is disclosed to a person (including another agency or Minister) by the agency or Minister, the agency or Minister shall ensure that there is also furnished to that person, with the document containing the information, a statement—
- (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading, as the case may be; and
- (ii) giving particulars of the notation,

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

*Freedom of Information.***Notation of records supplied before commencement of this section.**

- 5 **50.** 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 section 49 (4) (a) to a person (including another agency or Minister) to whom information contained in the record to which the notation relates was furnished before the commencement of this section.

PART VI.

REVIEW OF DECISIONS.

Interpretation.

- 10 **51.** For the purposes of this Part, unless the contrary intention appears—
- (a) a certificate given under section 32, 33, 35 or 36 in respect of a document as described in a request shall be deemed to be a certificate given in respect of the document so described ~~notwithstanding~~ that the certificate does not acknowledge the existence or non-existence of the document so described; and
- 15 (b) a claim that a document would, if it exists, be an exempt document under section 32, 33, 35 or 36 shall be deemed to be a claim that the document is an exempt document under that section ~~notwithstanding~~ that the existence or non-existence of the document is not acknowledged.
- 20

Internal review.

- 52. (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—
- 25 (a) a decision refusing to give access to a document in accordance with a request or deferring the giving of access to a document;
- or

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- (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 giving of access to a document to which the request relates,

the applicant may, within 28 days after the day on which that decision is notified to the applicant, apply in writing to the principal officer of the agency for a review of the decision in accordance with this section.

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

(3) Subsection (1) does not apply in relation to—

- (a) a decision made on a review under this section; or
(b) a decision that is, under section 54 (1), to be deemed to have been made.

(4) Section 28 applies in relation to a decision made under this section refusing access to a document in the same manner as that section applies in relation to a decision made under Part III refusing access to a document in accordance with a request.

Application to District Court.

53. (1) Subject to this section, an application may be made to the Court for review of—

- (a) a decision refusing access to a document in accordance with a request or deferring the giving of access to a document;
(b) a decision referred to in section 29;
(c) a decision to give access to a document which the applicant (being the Commonwealth or State or States required to be notified pursuant to section 31 (3)) contends is an exempt document of the kind referred to in section 31;

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- (d) a decision to give access to a document which the applicant (being the person or next-of-kin required to be notified pursuant to section 39 (3)) contends is an exempt document of the kind referred to in section 39; or
- 5 (e) a decision to give access to a document which the applicant (being the undertaking required to be notified pursuant to section 42 (3)) contends is an exempt document of the kind referred to in section 42.

(2) Subject to subsection (3), where, in relation to a decision
10 referred to in subsection (1) (a), a person is or has been entitled to apply under section 52 for a review of the decision, that person is not entitled to make an application under subsection (1) in relation to that decision, but may make such an application in respect of the decision made on such a review.

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

- (a) the person concerned has applied under section 52 for a review of the decision;
- 20 (b) a period of 14 days has elapsed since the day on which that application was received by or on behalf of the agency concerned; and
- (c) the person concerned 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
25 been made within the time allowed by subsection (4) if it appears to the Court that there has been 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) is to be made in respect of
30 a decision is—

- (a) except where paragraph (b) applies—the period commencing on the day on which notice of the decision was given to the applicant in accordance with section 28 and ending on the 60th day after that day; or

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- (b) where the decision is a decision that is to be deemed by section 54 (1) 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 60th day after that day.

5 Application to District Court where decision delayed.

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

- (a) a request has been made to an agency or Minister;
- (b) the period of 45 days, in relation to that request, referred to in section 21 has expired since the day on which the request was received by or on behalf of the agency or Minister; and
- (c) notice of a decision on the request has not been received by the applicant,

the principal officer of the agency or Minister shall, for the purpose of enabling an application to be made to the Court under section 53, be deemed to have made, on the last day of that period, a decision refusing access to the document.

(2) Where, after an application has been made to the Court by virtue of this section but before the Court has finally dealt with the application, a decision, other than a decision to give, 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.

(3) Before dealing 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.

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Powers of District Court.

55. (1) Subject to this section, 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 a request, and to decide any matter in relation to a 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.

(2) Where, in proceedings under this Act, 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 given.

(3) Where there is in force in respect of a document a certificate under section 32, 33, 35 or 36, the powers of the Court do not extend to reviewing the decision to give the certificate.

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

(5) Where—

(a) application is or has been made to the Court for review of a decision refusing access to a document in accordance with a request; and

(b) the agency to which or the Minister to whom the request was made—

(i) has given to the applicant a notice under this Act of the decision, being a notice that does not include a statement (in whatever terms expressed) to the effect that access to the document is being refused for the reason that, by virtue of the operation of section 14 (2) or of that section as modified by regulations in pursuance of section 14 (3), the applicant is not entitled to access to that document; or

(ii) informs or has informed the Court, either before or in the course of the proceedings for the review of the decision, that the agency or the Minister, as the case may be, does

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not intend, or does not any longer intend, to refuse access to the document for the reason referred to in subparagraph (i),

5 then, for the purposes of the review by the Court of that decision, this Act has effect as if section 14 (2), or that section as so modified, as the case requires, had not been enacted.

10 (6) Where, in proceedings under this Act, the Court is satisfied that an officer of an agency has failed to comply with a duty, or has wrongly exercised a power, imposed or conferred on the officer by or under this Act, the Court may take such measures as it thinks fit to bring that matter to the attention of the principal officer of the agency or, where that officer is the principal officer of the agency, the responsible Minister in relation to the agency.

Parties.

15 56. For the purposes of this Part and of the application of the District Court Act, 1973, in respect of proceedings under this Part—

- (a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and
- 20 (b) in proceedings by virtue of section 54, the agency or Minister to which or to whom the request the subject of the proceedings was made shall be a party to the proceedings.

Onus.

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

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District Court to ensure non-disclosure of certain matters.

58. (1) In proceedings under this Part, the Court may make such orders as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of preventing the disclosure of—

- 5 (a) exempt matter contained in a document to which the proceedings relate; or
(b) information of the kind referred to in section 27 (1).

(2) Notwithstanding anything contained in the District Court Act, 1973—

- 10 (a) the Court shall not, in its decision, or reasons for a decision, in a matter arising under this Act, include any matter or information of a kind referred to in subsection (1) (a) or (b); and
(b) the Court may receive evidence, or hear argument, in the absence
15 of the applicant or the applicant's representative where it is necessary to do so in order to prevent the disclosure of matter or information of a kind referred to in subsection (1) (a) or (b).

Production of exempt documents.

59. (1) Where there are proceedings before the Court under this Act in relation to a document that is claimed to be an exempt document and the
20 Court is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt document, it may require the document to be produced for inspection by the Court only and, if, upon the inspection, the Court is satisfied that the document is an exempt document, the Court shall return the document to the person by whom it was produced without permitting any
25 person other than a member of the Court, or a member of the staff of the Court in the course of the performance of that member's duties as a member of that staff, to have access to the document and without disclosing the contents of the document to any such person.

(2) The Court may require the production, for inspection by the
30 Court only, of an exempt document for the purpose of determining whether it is practicable for an agency or Minister to give access to a copy of the document with such deletions as to make the copy not an exempt document

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and, where an exempt document is produced by reason of such a requirement, the Court shall, after inspection of the document by the Court, return the document to the person by whom it was produced without permitting any person other than the Court, or a member of the staff of the Court in the course of the performance of that member's duties as a member of that staff, to have access to the document and without disclosing the contents of the document to any such person.

(3) Notwithstanding subsections (1) and (2), but subject to subsection (4), the Court is not empowered, in any proceedings, to require—

- 10 (a) the production of a document in respect of which there is in force a certificate under section 32, 33, 35 or 36; or
- (b) the giving of information in respect of which a certificate is in force under section 32 (4), 33 (4), 35 (6) or 36 (4).

(4) Where a certificate of a kind referred to in subsection (3) (a) identifies a part or parts of the document concerned in the manner provided in section 32 (3), 33 (3), 35 (5) or 36 (3), subsection (3) does not prevent the Court from requiring the production, in any proceedings before the Court under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

20 (5) Subsections (1) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those subsections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.

25 Evidence of certificates.

60. In proceedings before the Court under this Part, evidence of a certificate under section 32, 33, 35 or 36, including evidence of the identity or nature of a document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the document to which it relates.

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Review by Ombudsman.

61. (1) Except as provided by subsections (2), (3) and (4), this Act does not affect the powers of the Ombudsman under the Ombudsman Act, 1974.

5 (2) The Ombudsman shall not investigate the conduct of any person or body in relation to any decision of an agency if—

- (a) that decision is subject to a right of review under section 52; or
- (b) that decision is the subject of a review being carried out under this Part.

10 (3) The Ombudsman shall not disclose any exempt matter—

- (a) in any report made by the Ombudsman under Part IV of the Ombudsman Act, 1974; or
- (b) in any comments made by the Ombudsman to any complainant under section 29 (c) of that Act.

15 (4) Where there is in force in respect of a document a certificate under section 32, 33, 35 or 36, the powers of the Ombudsman under the Ombudsman Act, 1974, do not extend to investigating the conduct of any person or body in relation to the giving of the certificate.

PART VII.

20

MISCELLANEOUS.**Protection against certain actions.**

62. (1) Where access has been given to a document and—

- (a) the access was required by this Act to be given or would, but for the operation of section 14 (2) or of that subsection as modified by regulations made in pursuance of section 14 (3), have been
- 25 so required to be given; or

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(b) the access was authorised by a Minister, or by an officer having authority, in accordance with section 25 or 52, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given,

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

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorisation or approval, for the purposes of the law relating to defamation
15 or breach of confidence, of the publication of the document or its contents by the person to whom access is given.

Protection in respect of offences.

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

20 (a) the access was required by this Act to be given or would, but for the operation of section 14 (2) or of that subsection as modified by regulations made in pursuance of section 14 (3), have been so required to be given; or

25 (b) the access was authorised by a Minister, or by an officer having authority, in accordance with section 25 or 52, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given,

neither the person authorising the access nor any person concerned in the giving of the access is guilty of an offence by reason only of the authorising or giving of the access.

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Reports to Parliament.

64. (1) The Minister shall—

- 5 (a) as soon as practicable after 30th June in each year and in any case not later than 31st October next following that 30th June, prepare a report on the operation of this Act during the year that ended on that 30th June; and
- (b) cause that report to be laid before each House of Parliament within 15 sitting days of that House after the preparation of that report is completed.

10 (2) Each agency shall, in relation to the agency, and each Minister shall, in relation to the Minister's official documents, furnish to the Minister administering this Act such information as the Minister administering this Act requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing
15 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 Minister might be required, in pursuance of subsection (2), to furnish to the Minister administering this Act, a report
20 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—
- 25 (i) the number of requests for access to documents received during the year;
- (ii) the number of decisions made during the year (other than decisions made under section 52) refusing to give access to documents in relation to which requests have, at any time, been received;
- 30 (iii) the number of decisions made during the year (other than decisions made under section 52) deferring the giving of access to documents in relation to which requests have, at any time, been received;

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- 5 (iv) in respect of such provisions of this Act as may be prescribed for the purposes of this subparagraph, the number of decisions made under each such provision during the year refusing access to documents relating to which requests have, at any time, been received;
- (v) particulars of the classification and designation of officers authorised by the responsible Minister or principal officer in accordance with section 25 to make decisions in respect of requests;
- 10 (vi) the number of applications made during the year for the review of decisions under section 52 and particulars of the results of any such reviews;
- (vii) the number of applications made during the year to the Court for the review of decisions and particulars of the results of any such reviews;
- 15 (viii) particulars of the total charges collected during the year in dealing with requests, whenever received; and
- (ix) particulars of changes in administrative procedures occasioned by the need to comply with the obligations imposed by this Act;
- 20
- (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 Government 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 Government Department referred to in paragraph (b) to assist agencies to comply with their obligations under this Act.

30 (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, have, respectively, complied with sections 10 and 11.

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Regulations.

65. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for
5 carrying out or giving effect to this Act and, in particular, for or with respect to—

- 10 (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 giving of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
- (b) the officers who may give decisions on behalf of an agency.

(2) Without limiting the generality of subsection (1), regulations
15 under that subsection for or with respect to the making of charges—

- 20 (a) shall not be such that the amount or rate of charge varies according to whether an applicant is included in one class of applicant or another class of applicant or according to whether a document is a document of one agency or of an agency included in one class of agency or is a document of another agency or of an agency included in another class of agency;
- 25 (b) shall not be such that a charge is made for time that is spent by an agency or Minister in examining a document to which a request for access has been made with a view to deciding whether that document contains exempt matter;
- 30 (c) shall, if a charge is made for time that is spent by an agency or Minister in searching for or retrieving a document, provide for that charge to be calculated at a single hourly rate that shall be applied by an agency or Minister in respect of any request, regardless of the classification or designation of the officer who searches for or retrieves the document; and
- 35 (d) may provide for a charge to be made that takes into account the direct costs incurred by an agency or 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.

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(3) Where, as a result of a request, access is given to a document in respect of which the applicant would not be entitled to access under this Act, regulations under this Act relating to charges apply as if the applicant had been given access to that document in accordance with an entitlement
5 under this Act.

SCHEDULE 1.

(Sec. 9.)

BODIES AND PERSONS EXEMPT FROM THE OPERATION OF THIS ACT.

SCHEDULE 2.

10

CORRESPONDING LAWS.

(Sec. 36.)

Freedom of Information Act 1982 of the Commonwealth.

Freedom of Information Act 1982 of Victoria.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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