

Schedule 1

[Glossary cl. 1]

Exempt matter

1. Cabinet and Executive Council

Exemptions

- (1) Matter is exempt matter if its disclosure would reveal the deliberations or decisions of an Executive body, and, without limiting that general description, matter is exempt matter if it —
 - (a) is an agenda, minute or other record of the deliberations or decisions of an Executive body;
 - (b) contains policy options or recommendations prepared for possible submission to an Executive body;
 - (c) is a communication between Ministers on matters relating to the making of a Government decision or the formulation of a Government policy where the decision is of a kind generally made by an Executive body or the policy is of a kind generally endorsed by an Executive body;
 - (d) was prepared to brief a Minister in relation to matters —
 - (i) prepared for possible submission to an Executive body; or
 - (ii) the subject of consultation among Ministers relating to the making of a Government decision of a kind generally made by an Executive body or the formulation of a Government policy of a kind generally endorsed by an Executive body;
 - (e) is a draft of a proposed enactment; or
 - (f) is an extract from or a copy of, or of part of, matter referred to in any of paragraphs (a) to (e).

Limits on exemptions

- (2) Matter that is merely factual, statistical, scientific or technical is not exempt matter under subclause (1) unless —
 - (a) its disclosure would reveal any deliberation or decision of an Executive body; and
 - (b) the fact of that deliberation or decision has not been officially published.
- (3) Matter is not exempt matter under subclause (1) if it, or, in the case of matter referred to in subclause (1)(f), the original matter, came into existence before the commencement of section 10 and at least 15 years have elapsed since it or the original matter (as the case may be) came into existence.

- (4) Matter is not exempt matter under subclause (1) if it, or, in the case of matter referred to in subclause (1)(f), the original matter, came into existence after the commencement of section 10 and at least 10 years have elapsed since it or the original matter (as the case may be) came into existence.
- (5) Matter is not exempt by reason of the fact that it was submitted to an Executive body for its consideration or is proposed to be submitted if it was not brought into existence for the purpose of submission for consideration by the Executive body.

Definition

- (6) In this clause “**Executive body**” means —
 - (a) Cabinet;
 - (b) a committee of Cabinet;
 - (c) a subcommittee of a committee of Cabinet; or
 - (d) Executive Council.

2. Inter-governmental relations

Exemptions

- (1) Matter is exempt matter if its disclosure —
 - (a) could reasonably be expected to damage relations between the Government and any other government; or
 - (b) would reveal information of a confidential nature communicated in confidence to the Government (whether directly or indirectly) by any other government.

Limit on exemptions

- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

Definition

- (3) In this clause —
“**other government**” means the government of the Commonwealth, another State, a Territory or a foreign country or state.

3. Personal information

Exemption

- (1) Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).

Limits on exemption

- (2) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.

- (3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to —
 - (a) the person;
 - (b) the person's position or functions as an officer; or
 - (c) things done by the person in the course of performing functions as an officer.
- (4) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to —
 - (a) the person;
 - (b) the contract; or
 - (c) things done by the person in performing services under the contract.
- (5) Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.
- (6) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

4. Commercial or business information

Exemptions

- (1) Matter is exempt matter if its disclosure would reveal trade secrets of a person.
- (2) Matter is exempt matter if its disclosure —
 - (a) would reveal information (other than trade secrets) that has a commercial value to a person; and
 - (b) could reasonably be expected to destroy or diminish that commercial value.
- (3) Matter is exempt matter if its disclosure —
 - (a) would reveal information (other than trade secrets or information referred to in subclause (2)) about the business, professional, commercial or financial affairs of a person; and
 - (b) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

Limits on exemptions

- (4) Matter is not exempt matter under subclause (1), (2) or (3) merely because its disclosure would reveal information about the business, professional, commercial or financial affairs of an agency.

- (5) Matter is not exempt matter under subclause (1), (2) or (3) merely because its disclosure would reveal information about the business, professional, commercial or financial affairs of the applicant.
- (6) Matter is not exempt matter under subclause (1), (2) or (3) if the applicant provides evidence establishing that the person concerned consents to the disclosure of the matter to the applicant.
- (7) Matter is not exempt matter under subclause (3) if its disclosure would, on balance, be in the public interest.

4A. Information provided to Treasurer under section 22 of *Bank of Western Australia Act 1995*

Matter is exempt matter if it consists of information provided to the Treasurer under section 22 of the *Bank of Western Australia Act 1995*.

5. Law enforcement, public safety and property security

Exemptions

- (1) Matter is exempt matter if its disclosure could reasonably be expected to —
 - (a) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - (b) reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;
 - (c) enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered;
 - (d) prejudice the fair trial of any person or the impartial adjudication of any case or hearing of disciplinary proceedings;
 - (e) endanger the life or physical safety of any person;
 - (f) endanger the security of any property;
 - (g) prejudice the maintenance or enforcement of a lawful measure for protecting public safety; or
 - (h) facilitate the escape of any person from lawful custody or endanger the security of any prison.
- (2) Matter is exempt matter if it was created by —
 - (a) the Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit or Internal Affairs Unit of the Police Force of Western Australia; or
 - (b) the Internal Investigations Unit of Corrective Services.

- (3) Matter is exempt matter if it originated with, or was received from, a Commonwealth intelligence or security agency.

Limits on exemptions

- (4) Matter is not exempt matter under subclause (1) or (2) if —
- (a) it consists merely of one or more of the following —
 - (i) information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by the law;
 - (ii) a general outline of the structure of a programme adopted by an agency for dealing with any contravention or possible contravention of the law; or
 - (iii) a report on the degree of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law;
- and
- (b) its disclosure would, on balance, be in the public interest.

Definitions

- (5) In this clause —
- “Commonwealth intelligence or security agency”** means —
- (a) the Australian Security Intelligence Organization;
 - (b) the Australian Secret Intelligence Service;
 - (c) that part of the Department of Defence of the Commonwealth known as the Defence Signals Directorate; or
 - (d) that part of the Department of Defence of the Commonwealth known as the Defence Intelligence Organisation.
- “contravention”** includes a failure to comply;
- “the law”** means the law of this State, the Commonwealth, another State, a Territory or a foreign country or state.

6. Deliberative processes

Exemptions

- (1) Matter is exempt matter if its disclosure —
- (a) would reveal —
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and

- (b) would, on balance, be contrary to the public interest.

Limits on exemptions

- (2) Matter that appears in an internal manual of an agency is not exempt matter under subclause (1).
- (3) Matter that is merely factual or statistical is not exempt matter under subclause (1).
- (4) Matter is not exempt matter under subclause (1) if at least 10 years have passed since the matter came into existence.

7. Legal professional privilege

Exemption

- (1) Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Limit on exemption

- (2) Matter that appears in an internal manual of an agency is not exempt matter under subclause (1).

8. Confidential communications

Exemptions

- (1) Matter is exempt matter if its disclosure (otherwise than under this Act or another written law) would be a breach of confidence for which a legal remedy could be obtained.
- (2) Matter is exempt matter if its disclosure —
 - (a) would reveal information of a confidential nature obtained in confidence; and
 - (b) could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.

Limits on exemption

- (3) Matter referred to in clause 6(1)(a) is not exempt matter under subclause (1) unless its disclosure would enable a legal remedy to be obtained for a breach of confidence owed to a person other than —
 - (a) a person in the capacity of a Minister, a member of the staff of a Minister, or an officer of an agency; or
 - (b) an agency or the State.
- (4) Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest.

9. The State's economy

Exemptions

- (1) Matter is exempt matter if its disclosure could reasonably be expected to —
 - (a) have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State; or
 - (b) result in an unfair benefit or detriment to any person or class of persons because of the premature disclosure of information concerning any proposed action or inaction of the Parliament, the Government or an agency in the course of, or for the purpose of, managing the economy of the State.

Limit on exemption

- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

10. The State's financial or property affairs

Exemptions

- (1) Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or an agency.
- (2) Matter is exempt matter if its disclosure would reveal trade secrets of an agency.
- (3) Matter is exempt matter if its disclosure —
 - (a) would reveal information (other than trade secrets) that has a commercial value to an agency; and
 - (b) could reasonably be expected to destroy or diminish that commercial value.
- (4) Matter is exempt matter if its disclosure —
 - (a) would reveal information (other than trade secrets or information referred to in subclause (3)) concerning the commercial affairs of an agency; and
 - (b) could reasonably be expected to have an adverse effect on those affairs.
- (5) Matter is exempt matter if its disclosure —
 - (a) would reveal information relating to research that is being, or is to be, undertaken by an officer of an agency or by a person on behalf of an agency; and
 - (b) would be likely, because of the premature release of the information, to expose the officer or person or the agency to disadvantage.

Limit on exemptions

- (6) Matter is not exempt matter under subclause (1), (2), (3), (4) or (5) if its disclosure would, on balance, be in the public interest.

11. Effective operation of agencies

Exemptions

- (1) Matter is exempt matter if its disclosure could reasonably be expected to —
- (a) impair the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency;
 - (b) prevent the objects of any test, examination or audit conducted by an agency from being attained;
 - (c) have a substantial adverse effect on an agency's management or assessment of its personnel; or
 - (d) have a substantial adverse effect on an agency's conduct of industrial relations.

Limit on exemptions

- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

12. Contempt of Parliament or court

Exemptions

Matter is exempt matter if its public disclosure would, apart from this Act and any immunity of the Crown —

- (a) be in contempt of court;
- (b) contravene any order or direction of a person or body having power to receive evidence on oath; or
- (c) infringe the privileges of Parliament.

13. Information as to adoption or artificial conception

Exemption

Matter is exempt matter if its disclosure would reveal —

- (a) information relating to the adoption of a child or arrangements or negotiations for or towards or with a view to the adoption of a child; or
- (b) information relating to the participation of a person in an artificial fertilization procedure as defined in the *Human Reproductive Technology Act 1991* or as to a person having been born as a result of such a procedure.

14. Information protected by certain statutory provisions

Exemptions

- (1) Matter is exempt matter if it is matter of a kind mentioned in —
 - (a) section 167(1)(a), (1)(c), (2)(a) or (2)(b) of the *Equal Opportunity Act 1984*;
 - (b) section 64(2)(a), (2)(b) or (3) of the *Legal Aid Commission Act 1976*;
 - (c) section 23(1) of the *Parliamentary Commissioner Act 1971*;
or
 - (d) section 109Q(1) of the *Prisons Act 1981*.
- (2) Matter is exempt matter if it is matter to which a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971* applies.
- (3) Matter is exempt matter if its disclosure would reveal anything said or admitted for the purposes of a conciliation under —
 - (a) Division 3 of Part 3; or
 - (b) administrative instructions under section 23,
of the *Health Services (Conciliation and Review) Act 1995*.
- (4) Matter is exempt matter if it is matter of a kind mentioned in section 29(3) of the *Industry and Technology Development Act 1998*.

15. Information as to precious metal transactions

Exemption

- (1) Matter is exempt matter if its disclosure would reveal information about —
 - (a) gold or other precious metal received by Gold Corporation from a person, or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit; or
 - (b) a transaction relating to gold or other precious metal received or held by Gold Corporation.

Definition

- (2) In this clause —
“**Gold Corporation**” means the Gold Corporation constituted under section 4 of the *Gold Corporation Act 1987* or a subsidiary of Gold Corporation within the meaning of that Act.

[Schedule 1 amended by No. 31 of 1993 s.43; No. 94 of 1994 s.3; No. 14 of 1995 s.44; No. 50 of 1995 s.3; No. 75 of 1995 s.80(4); No. 11 of 1996 s.41; No. 57 of 1997 s.62(3); No. 13 of 1998 s.34(2); No. 43 of 1999 s.20.]

Schedule 2

[Glossary, cl.1]

Exempt agencies

The Governor and the Governor's establishment.

The Legislative Council or a member or committee of the Legislative Council.

The Legislative Assembly or a member or committee of the Legislative Assembly.

A joint committee or standing committee of the Legislative Council and the Legislative Assembly.

A department of the staff of Parliament.

The Anti-Corruption Commission

The Auditor General and the Office of the Auditor General.

The Director of Public Prosecutions.

The Information Commissioner.

The Parliamentary Commissioner for Administrative Investigations.

The Parole Board.

The Supervised Release Review Board.

The State Government Insurance Corporation.

The Perth International Centre for Application of Solar Energy.

Any Royal Commission or member of a Royal Commission.

The Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit and Internal Affairs Unit of the Police Force of Western Australia.

The Internal Investigations Unit of Corrective Services.

A person who holds an office established under a written law for the purposes of a body referred to in this Schedule.

[Schedule 2 amended by No. 31 of 1993 s.44; No. 6 of 1994 s.13; No. 36 of 1994 s.35; No. 104 of 1994 s.236; No. 14 of 1995 s.44; No. 11 of 1996 s.41; No. 29 of 1996 s.26.]

Glossary

[Section 9]

1. Definitions

In this Act, unless the contrary intention appears —

“agency” means —

- (a) a Minister; or
- (b) a public body or office,

and **“the agency”** means the agency to which an access application or application for amendment of personal information has been made or to which such an application has been transferred or partly transferred;

“applicant” or **“access applicant”** means the person by whom or on whose behalf an access application has been made;

“applicant for amendment” means the person by whom or on whose behalf an application for amendment of personal information has been made;

“contractor” means a contractor as defined in the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981*, as is relevant to the case;

“Corrective Services” means the division concerned with corrective services in the department of the Public Service principally assisting the Minister administering the *Prisons Act 1981* in the administration of that Act;

“court” includes a tribunal;

“document” means —

- (a) any record;
- (b) any part of a record;
- (c) any copy, reproduction or duplicate of a record; or
- (d) any part of a copy, reproduction or duplicate of a record;

“edited copy”, in relation to a document, means a copy from which exempt matter has been deleted under section 24;

“exempt agency” means a person or body mentioned in Schedule 2 and includes staff under the control of the person or body;

“exempt document” means a document that contains exempt matter;

“exempt matter” means matter that is exempt matter under Schedule 1;

“exemption certificate” means a certificate under section 36;

“officer” of an agency includes —

- (a) a member of the agency;
- (b) the principal officer of the agency;

- (c) any person employed in, by, or for the purposes of, the agency; and
- (d) if the agency is a contractor or subcontractor, a director of the contractor or subcontractor (in addition to the persons referred to in paragraphs (a), (b) and (c));

“personal information” means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead —

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample;

“principal officer” of an agency means —

- (a) in relation to a department of the Public Service or an organization specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*— the chief executive officer of that department or organization;
- (b) in relation to the Police Force of Western Australia — the Commissioner of Police;
- (c) in relation to a local government — the chief executive officer of the local government;
- (d) in relation to a regional local government — the chief executive officer of the regional local government;
- (e) in relation to an agency that consists of one person (not being an incorporated body) — that person;
- (f) in relation to an agency for which the regulations declare an officer to be the principal officer of the agency — that officer;
- (fa) in relation to a contractor or to any subcontractor under the relevant contract — the holder of the office specified in the relevant contract to be the principal officer for the purposes of this Act;
- (g) in relation to any other agency —
 - (i) if it is an incorporated body that has no members — the person who manages the affairs of the body; or
 - (ii) if it is a body (whether incorporated or not) that is constituted by 2 or more persons — the person who is entitled to preside at any meeting of the body at which he or she is present;

“public body or office” means —

- (a) a department of the Public Service;

- (b) an organization specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*;
 - (c) the Police Force of Western Australia;
 - (d) a local government or a regional local government;
 - (e) a body or office that is established for a public purpose under a written law;
 - (f) a body or office that is established by the Governor or a Minister;
 - (g) any other body or office that is declared by the regulations to be a public body or office being —
 - (i) a body or office established under a written law; or
 - (ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (b), (e), (f) or (g)(i), or the holder of an office referred to in paragraph (f) or (g)(i);
- or
- (h) a contractor or subcontractor;

“record” means any record of information however recorded and includes the following —

- (a) any paper or other material, including affixed papers on which there is writing;
- (b) any map, plan, diagram or graph;
- (c) any drawing, pictorial or graphic work, or photograph;
- (d) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (e) any article or material from which sounds, images or writing can be reproduced whether or not with the aid of some other article or device;
- (f) any article on which information has been stored or recorded, either mechanically, magnetically or electronically;

“requested documents” means the document or documents requested in an access application;

“State archive” has the same definition as in the *State Records Act 2000*;

“subcontractor” means a subcontractor as defined in the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981*, as is relevant to the case;

“third party” means a third party referred to in section 32 or 33.

2. Related agencies

- (1) A person is not to be regarded as a separate agency by reason of —
 - (a) holding office as a member or other officer of an agency; or
 - (b) holding an office established for the purposes of an agency.
- (2) The Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit and Internal Affairs Unit of the Police Force of Western Australia are to be regarded as separate agencies and are not to be regarded as part of the Police Force of Western Australia.
- (3) The Internal Investigations Unit of Corrective Services is to be regarded as a separate agency and is not to be regarded as part of the department in which it is established.
- (4) The regulations may declare that a specified office or body is not to be regarded as a separate agency but is to be regarded as part of a specified agency.

3. Courts are agencies but judges, etc., are not

For the purposes of this Act —

- (a) a court is an agency;
- (b) a registry or other office of a court and the staff of such a registry or other office are part of the court;
- (c) a person holding a judicial office or other office pertaining to a court, being an office established by the written law establishing the court, is not an agency and is not included in an agency.

4. Documents of an agency

- (1) Subject to subclause (2), a reference to a document of an agency is a reference to a document in the possession or under the control of the agency including a document to which the agency is entitled to access and a document that is in the possession or under the control of an officer of the agency in his or her capacity as such an officer.
- (2) Where the agency is a Minister a reference to a document of an agency is a reference to a document that —
 - (a) is in the possession or under the control of the Minister in the Minister's official capacity; and
 - (b) relates to the affairs of another agency (not being another Minister),

and includes a document to which the Minister is entitled to access and a document in the possession or under the control of a member of the staff of the Minister as such a member, but does not include a document of an agency for which the Minister is responsible.

- (3) A document in the possession or under the control of an agency on behalf of or as an agent for —
 - (a) the Commonwealth, another State or a Territory; or
 - (b) an agency or instrumentality of the Commonwealth, another State or a Territory,

is not a document of the agency.

5. Documents of a court

A document relating to a court is not to be regarded as a document of the court unless it relates to matters of an administrative nature.

6. Documents of Police and Corrective Services units

- (1) A document of the Bureau of Criminal Intelligence, Protective Services Unit, Witness Security Unit or Internal Affairs Unit of the Police Force of Western Australia is not to be regarded as a document of the Police Force of Western Australia.
- (2) A document of the Internal Investigations Unit of Corrective Services is not to be regarded as a document of the department in which it is established.

[7. *repealed*]

7A. Documents of Regulator etc. under gas pipelines access legislation

- (1) In this clause —

“**arbitrator**” has the meaning given by section 61 of the *Gas Pipelines Access (Western Australia) Act 1998* and includes any other arbitrator appointed under section 16 of Schedule 1 to that Act;

“**Board**” and “**Regulator**” have the meanings given by sections 49 and 26 respectively of the *Gas Pipelines Access (Western Australia) Act 1998*.
- (2) A document —
 - (a) that is in the possession or under the control of the Regulator, the Board or an arbitrator; or
 - (b) to which the Regulator, the Board or an arbitrator is entitled to access,

is not to be regarded as a document of the Regulator, the Board or an arbitrator unless it relates to a matter of an administrative nature concerning the Regulator, the Board or an arbitrator.

8. Charges for dealing with applications

A reference to charges imposed or payable for dealing with an access application includes a reference to charges for giving access to the requested documents or to edited copies of the requested documents.

*[Glossary amended by No. 31 of 1993 s.45; No. 32 of 1994 s.19;
No. 11 of 1996 s.41; No. 14 of 1996 s.4; No. 65 of 1998 s.89; No. 43
of 1999 s.20; No. 47 of 1999 s.15; No. 53 of 2000 s.10.]*