



Western Australia

Freedom of Information Act 1992

As at 03 Mar 2015

Version 06-e0-00

Extract from www.slp.wa.gov.au, see that website for further information

Freedom of Information Act 1992

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Objects of Act	2
4.	Agencies, duties of when applying Act	3
5.	Crown bound	3
6.	Access rights etc. in Parts 2 and 4 do not apply to documents that are already available	3
7.	Access rights in Parts 2 and 4, application of to private collections	4
8.	Access rights etc. in Parts 2 and 4, effect of on other Acts etc.	4
9.	Terms used (Glossary)	4

Part 2 — Access to documents

Division 1 — Right of access and applications for access

10.	Right of access to documents	5
11.	Application for access	5
12.	Access application, form etc. of	5

Division 2 — Procedure for dealing with access applications

13.	Agency's duties as to access application etc.	6
14.	Ambit of application may be reduced by agreement	8
15.	Document held etc. by another agency, transferring application etc. in case of	8
16.	Charge for access, calculation of etc.	9

Contents

17.	Charge for access, applicant may request estimate of etc.	10
18.	Deposit for charges, agency may require etc.	10
19.	Notice given under s. 17(3) or 18, effect of on s. 13(1); applicant failing to respond to notice, effect of	11
20.	Agency may refuse to deal with application in certain cases	12
21.	Application for personal information about applicant, consideration of	13
22.	Access, when agency must give	13
23.	Refusing access, grounds for	13
24.	Exempt matter, deleting before access given	14
25.	Deferring access, grounds for	15
26.	Documents that cannot be found or do not exist, notice of	15
27.	Ways in which access can be given	16
28.	Medical and psychiatric information about applicant, giving access to	17
29.	Personal information about applicant, agency's duties when giving access to	18
30.	Notice under s. 13(1)(b) of decision, form etc. of	18
31.	Certain exempt matter (Sch. 1 cl. 1, 2 or 5), giving information about existence etc. of	19
	Division 3 — Consultation with third parties	
32.	Personal information about third party, when access to may be given	20
33.	Commercial etc. information of third party, when access to may be given	21
34.	Consultation under s. 32 or 33, procedure after	21
35.	Consultation under s. 32 or 33, Commissioner may waive	23
	Division 4 — Exemption certificates	
36.	Premier may issue certificate	23
37.	Effect of certificate	24
38.	Duration of certificate	24
	Division 5 — Internal review of decisions as to access	
39.	Review of decision under this Part, right to	24

40.	Application for review	25
41.	Who is to deal with application for review	26
42.	How application for review to be dealt with	26
43.	Decision can be confirmed, varied or reversed on review	26
44.	No charge for review	26
Part 3 — Amendment of personal information		
Division 1 — Applications for amendment		
45.	Right to apply for information to be amended	27
46.	Application for amendment, form etc. of	27
47.	Document held etc. by another agency, transferring application in case of	28
48.	Amending information, ways of	29
49.	Decision on application, notice of	30
50.	If application for amendment refused, applicant may request notation etc. disputing accuracy of information etc.	31
51.	Claim that information is inaccurate etc., agency to give notice of in some cases	32
52.	Reasons for not amending information, agency may add to notation	32
53.	No charge for application or request	32
Division 2 — Internal review of decisions as to amendment of information		
54.	Review of decision under Div. 1, right to etc.	33
Part 4 — External review of decisions; appeals		
Division 1 — Information Commissioner		
55.	Office established etc.	34
56.	Appointment, terms and conditions	34
57.	Resignation	35
58.	Suspension and removal	35
59.	Acting Information Commissioner, appointing etc.	36
60.	Oath or affirmation of office	36
61.	Staff, appointment of etc.	37

62.	Commissioner and staff, additional provisions about	38
	Division 2 — Functions of Information Commissioner	
63.	Functions	39
64.	Powers	40
	Division 3 — Complaints and procedure for dealing with them	
65.	Complaint against agency's decision, making	40
66.	Complaint, form etc. of	41
67.	Commissioner may decide not to deal with a complaint	42
68.	Complaint, agency etc. to be notified of	42
69.	Complaint, who are parties to etc.	43
70.	Complaint, procedure for dealing with	43
71.	Complaint, conciliation etc. of	44
72.	Information etc. relevant to complaint, Commissioner's powers to obtain etc.	44
73.	Examination on oath, powers as to	45
74.	Exempt matter etc., Commissioner to ensure non-disclosure of	45
75.	Document held by agency, Commissioner may require production of	46
76.	Commissioner's other powers and duties when dealing with complaint	46
77.	Exemption certificate, review of grounds for etc.	47
78.	Question of law on complaint, referral of to Supreme Court	49
	Division 4 — General provisions as to the Information Commissioner and staff	
79.	Delegation by Commissioner to staff	50
80.	Protection from personal liability	50
81.	Disclosure restriction under other law does not apply to disclosing to Commissioner; privileges of parties	50
82.	Disclosure etc. of information obtained under Act restricted	51
83.	Failure to give information etc. when required, offence	51

84.	Costs of parties to complaints	52
	Division 5 — Appeals to the Supreme Court	
85.	What may be appealed etc.	52
86.	Parties to an appeal	53
87.	Court's powers on appeal	53
	Division 6 — General provisions as to proceedings in the Supreme Court	
88.	Term used: review proceedings	54
89.	Terms etc., Court may impose; costs	54
90.	Exempt matter etc., Court to ensure non-disclosure of	54
91.	Document held by agency, Court may require production of etc.	55
92.	Disclosure restriction under other law does not apply to disclosing to Court	55
93.	Other procedure, Court may determine	56
	Part 5 — Publication of information about agencies	
94.	Term used: information statement	57
95.	Term used: internal manual	58
96.	Information statement, each agency to publish annually	59
97.	Information statement and internal manual, each agency to make available etc.	59
	Part 6 — Miscellaneous	
98.	Child or handicapped person, applications on behalf of	61
99.	Defunct agency, performance of functions on behalf of	61
100.	Who in agency makes its decisions	61
101.	Notice sent by post or fax, presumed time of service of	62
102.	Burden of proof	62
103.	No review of decisions etc. except under this Act	62
104.	Defamation or breach of confidence action, certain people protected from	63
105.	Criminal liability, certain people protected from	63

Contents

106.	Personal liability, certain people protected from	64
107.	Failure to consult under Part 2 Div. 3, Crown etc. not liable in case of	64
108.	Exempt matter does not have to be published	64
109.	Personal information of another etc., obtaining access to by deceit etc. is offence	64
110.	Destroying document to prevent access, offence	65
111.	Annual report to Parliament	65
112.	Regulations	67
113.	Review of Act	68

Schedule 1 — Exempt matter

1.	Cabinet and Executive Council, deliberations etc. of	69
2.	Inter-governmental relations, matter that could damage etc.	70
3.	Personal information	71
4.	Trade secrets, commercial and business information	72
4A.	Information given to Treasurer etc. under <i>Bank of Western Australia Act 1995</i>	72
5.	Law enforcement, public safety and property security, matter prejudicial etc. to	73
6.	Deliberative processes of Government etc., matter revealing	74
7.	Legal professional privilege, matter subject to	75
8.	Confidential communications	75
9.	State's economy, matter adversely affecting management of etc.	76
10.	State's financial or property affairs, matter adversely affecting etc.	76
11.	Effective operation of agencies, matter impairing etc.	77
12.	Contempt of Parliament or court, matter that would be	77
13.	Adoption or artificial conception information	78
14.	Information protected by certain statutory provisions	78
15.	Precious metal transactions, information as to	80

Schedule 2 — Exempt agencies

Glossary

1.	Terms used	83
2.	Separate agencies, which are	86
3.	Courts are agencies but judges etc. are not	87
4.	Documents of an agency, which are	87
5.	Documents of a court, which are	88
6.	Documents of units of Police Force and of Department of Corrective Services	88
7A.	Documents of Authority etc. under gas pipelines access legislation	88
8.	Charges for dealing with applications	89

Notes

	Compilation table	90
	Provisions that have not come into operation	93

Defined terms

Western Australia

Freedom of Information Act 1992

An Act to provide for public access to documents, and to enable the public to ensure that personal information in documents is accurate, complete, up to date and not misleading, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Freedom of Information Act 1992*¹.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Objects of Act

- (1) The objects of this Act are to —
 - (a) enable the public to participate more effectively in governing the State; and
 - (b) make the persons and bodies that are responsible for State and local government more accountable to the public.
- (2) The objects of this Act are to be achieved by —
 - (a) creating a general right of access to State and local government documents; and
 - (b) providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and
 - (c) requiring that certain documents concerning State and local government operations be made available to the public.
- (3) Nothing in this Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under this Act if that can properly be done or is permitted or required by law to be done.

4. Agencies, duties of when applying Act

Agencies are to give effect to this Act in a way that —

- (a) assists the public to obtain access to documents; and
- (b) allows access to documents to be obtained promptly and at the lowest reasonable cost; and
- (c) assists the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.

5. Crown bound

This Act binds the Crown.

6. Access rights etc. in Parts 2 and 4 do not apply to documents that are already available

Parts 2 and 4 do not apply to access to documents that are —

- (a) available for purchase by the public or free distribution to the public; or
- (b) available for inspection (whether for a fee or charge or not) under Part 5 or another enactment; or
- (c) State archives to which a person has a right to be given access under Part 6 of the *State Records Act 2000* despite this Act; or
- (d) publicly available library material held by agencies for reference purposes; or
- (e) made or acquired by an art gallery, museum or library and preserved for public reference or exhibition purposes.

[Section 6 amended by No. 53 of 2000 s. 6.]

7. Access rights in Parts 2 and 4, application of to private collections

If Parts 2 and 4 apply to documents in a private collection that is held by an art gallery, museum, library or other prescribed agency, the application of those Parts is subject to any limitations on access imposed by the person who lodged the collection.

[Section 7 amended by No. 53 of 2000 s. 7.]

8. Access rights etc. in Parts 2 and 4, effect of on other Acts etc.

- (1) Access to documents is to be given under Parts 2 and 4 despite any prohibitions or restrictions imposed by other enactments (whether enacted before or after the commencement of this Act) on the communication or divulging of information, and a person does not commit an offence against any such enactment merely by complying with this Act.
- (2) Subsection (1) applies in respect of any enactment (whether enacted before or after the commencement of this Act) unless the enactment is expressly stated to have effect despite this Act.
- (3) The application of subsection (1) is subject to clause 14 of Schedule 1.
- (4) The application of subsection (1) is subject to the *Royal Commission (Custody of Records) Act 1992*.
- (5) A person's right to be given access to a document that is a State archive is subject to Part 6 of the *State Records Act 2000*.

[Section 8 amended by No. 53 of 2000 s. 8.]

9. Terms used (Glossary)

The Glossary at the end of this Act defines or affects the meaning of some of the words and expressions used in this Act.

Part 2 — Access to documents

Division 1 — Right of access and applications for access

10. Right of access to documents

- (1) A person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with this Act.
- (2) Subject to this Act, a person's right to be given access is not affected by —
 - (a) any reasons the person gives for wishing to obtain access; or
 - (b) the agency's belief as to what are the person's reasons for wishing to obtain access.

11. Application for access

- (1) A person who wishes to obtain access to one or more documents of an agency (other than an exempt agency) may make an application to the agency.
- (2) If the circumstances of the applicant require it, an agency has to take reasonable steps to help a person to make an access application to the appropriate agency in a manner that complies with this Act.
- (3) In particular, if an application does not comply with the requirements of section 12 the agency has to take reasonable steps under subsection (2) to help the applicant to change the application so that it complies with those requirements.

12. Access application, form etc. of

- (1) The access application has to —
 - (a) be in writing; and
 - (b) give enough information to enable the requested documents to be identified; and

- (c) give an address in Australia to which notices under this Act can be sent; and
 - (d) give any other information or details required under the regulations; and
 - (e) be lodged at an office of the agency with any application fee payable under the regulations.
- (2) The access application may request that access to the documents be given in a particular way described in section 27(1).
- (3) An application may be lodged by delivery by hand, post or facsimile at an office of the agency to which it is directed.
- (4) If an application is lodged with an agency by post it is to be regarded as having been lodged with the agency at the end of the fifth day after it was posted.
- (5) If an application is lodged with an agency by facsimile it is to be regarded as having been lodged with the agency on the day on which it is transmitted.

Division 2 — Procedure for dealing with access applications

13. Agency's duties as to access application etc.

- (1) Subject to this Division, the agency has to deal with the access application as soon as is practicable (and, in any event, before the end of the permitted period) by —
- (a) considering the application and deciding —
 - (i) whether to give or refuse access to the requested documents; and
 - (ii) any charge payable for dealing with the application;
- and
- (b) giving the applicant written notice of the decision in the form required by section 30.

- (2) If the applicant does not receive notice under subsection (1)(b) within the permitted period the agency is taken to have refused, at the end of that period, to give access to the documents and the applicant is taken to have received written notice of that refusal on the day on which that period ended.
- (3) For the purposes of this section the *permitted period* is 45 days after the access application is received or such other period as is agreed between the agency and the applicant or allowed by the Commissioner under subsection (4) or (5).
- (4) On the application of the applicant, the Commissioner may reduce the time allowed to the agency to comply with subsection (1).
- (5) On the application of the agency, the Commissioner, on being satisfied that the agency has attempted to comply with subsection (1) within 45 days but that it is impracticable, in the circumstances, for it to comply within that time, may allow the agency an extension of time to comply with subsection (1) on such conditions as the Commissioner thinks fit.
- (6) If an extension of time is allowed under subsection (5) the agency has to give written notice of the extension to the applicant as soon as is practicable, and within 45 days after receiving the access application.
- (7) If, under subsection (2), the agency is taken to have refused access, the Commissioner may, on the application of the applicant, allow the agency an extension of time to comply with subsection (1) on such conditions (for example, reduction or waiver of charges) as the Commissioner thinks fit.
- (8) If an extension of time is allowed under subsection (7), subsection (2) does not have effect unless, at the end of the extended time, the applicant still has not received notice under subsection (1)(b).
- (9) This Division has effect subject to Division 3.

14. Ambit of application may be reduced by agreement

If it is apparent from the terms of the access application that an applicant seeks information of a certain kind contained in documents of the agency, the agency may, with the agreement of the applicant, deal with the application as if it were an application relating only to those parts of those documents that contain information of that kind.

15. Document held etc. by another agency, transferring application etc. in case of

- (1) If the agency does not hold the requested documents but knows, or has reasonable grounds to believe, that the documents are held by another agency (other than an exempt agency), the agency has to transfer the access application to the other agency.
- (2) If the agency holds the requested documents but the documents originated with or were received from another agency (other than an exempt agency), and are more closely related to the functions of that other agency, the agency may transfer the access application to that other agency together with copies of the documents.
- (3) The transferring agency has to give the applicant written notice of the transfer without delay.
- (4) The notice has to clearly state the day on which, and the agency to which, the access application was transferred.
- (5) The agency to which the access application is transferred, or partially transferred, is to be regarded as having received the application on the day on which it was received by the transferring agency.
- (6) The agency to which the access application is transferred under subsection (2) is required to make decisions as to access in respect of the documents of which it receives copies but not in respect of other documents that it holds which may fall within the scope of the documents requested in the original application.

- (7) If subsection (1) or (2) applies to one or more but not all of the requested documents the agency is authorised to make a partial transfer under this section as if a separate access application had been made in respect of the document or documents to which the relevant subsection applies.
- (8) If the agency holds the requested documents but the documents originated with or were received from an exempt agency, the agency has to notify the exempt agency that the access application has been made.

16. Charge for access, calculation of etc.

- (1) Any charge that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given, must be calculated by an agency in accordance with the following principles or, where those principles require, must be waived —
 - (a) a charge must only cover the time that would be spent by the agency in conducting a routine search for the document to which access is requested, and must not cover additional time, if any, spent by the agency in searching for a document that was lost or misplaced; and
 - (b) the charge in relation to time made under paragraph (a) must be fixed on an hourly rate basis; and
 - (c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the matter to which access is granted; and
 - (d) no charge may be made for providing an applicant with access to personal information about the applicant; and
 - (e) a charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents or in providing a written transcript of the words recorded or contained in documents; and

- (f) a charge must not be made for producing for inspection a document referred to in section 94 or 95; and
 - (g) a charge must be waived or be reduced if the applicant is impecunious; and
 - (h) a charge must not exceed such amount as may be prescribed by regulation from time to time.
- (2) Subject to section 18, payment of a charge will not be required before the time at which the agency has notified the applicant of the decision to grant access to a document.

[Section 16 amended by No. 57 of 1997 s. 62(1).]

17. Charge for access, applicant may request estimate of etc.

- (1) When making the access application the applicant may request an estimate of the charges that might be payable for dealing with the application.
- (2) If a request is made under subsection (1) the agency has to notify the applicant of its estimate, and the basis on which its estimate is made, as soon as is practicable.
- (3) If the agency estimates that the charges for dealing with the access application might exceed \$25, or such greater amount as is prescribed, then, whether or not a request has been made under subsection (1), the agency has to notify the applicant of its estimate, and the basis on which its estimate is made, and inquire whether the applicant wishes to proceed with the application and notify the applicant of the requirement of section 19(1)(b).

18. Deposit for charges, agency may require etc.

- (1) The agency may, in a notice given to an applicant under section 17(3), require the applicant to pay a deposit of a prescribed amount or at a prescribed rate on account of the charges for dealing with the application.

- (2) If the agency has required an applicant to pay a deposit on account of the charges, the agency has to, at the request of the applicant, discuss with the applicant practicable alternatives for changing the application or reducing the anticipated charges, including reduction of the charges if the applicant waives, either conditionally or unconditionally, the need for compliance by the agency with the time limit imposed by section 13(1).
- (3) A notice under subsection (1) requiring an applicant to pay a deposit has to give details of —
 - (a) the name and designation of the person who calculated the charge; and
 - (b) the rights of review under this Act and the procedure to be followed to exercise those rights; and
 - (c) the requirements of section 19(2)(b).
- (4) Further advance deposits may be required by the agency by written notice if the agency considers they are necessary to meet the charges for dealing with the application.

19. Notice given under s. 17(3) or 18, effect of on s. 13(1); applicant failing to respond to notice, effect of

- (1) If the agency has given the applicant a notice under section 17(3) —
 - (a) the period commencing on the day on which the notice was given, and ending on the day on which the agency is notified that the applicant intends to proceed with the access application, is to be disregarded for the purposes of section 13(1); and
 - (b) if intention to proceed is not notified within 30 days (or such further time as the agency allows) after the day on which the notice was given, the applicant is to be regarded as having withdrawn the access application.

- (2) If, under section 18(1) or (4), a notice requires the applicant to pay a deposit —
 - (a) the period commencing on the day on which the notice was given and ending on the day on which the deposit is paid is to be disregarded for the purposes of section 13(1); and
 - (b) if the deposit is not paid within 30 days (or such further time as the agency allows) after the day on which the notice was given, the applicant is to be regarded as having withdrawn the access application.
- (3) Any period during which the requirement to pay a deposit is being reviewed is to be disregarded for the purposes of subsection (2)(b).
- (4) If subsection (1)(b) or (2)(b) has effect, the agency has to refund to the applicant any unused portion of any advance deposit already paid in relation to the access application.

20. Agency may refuse to deal with application in certain cases

- (1) If the agency considers that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.
- (2) If after help has been given to change the access application the agency still considers that the work involved in dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency may refuse to deal with the application.
- (3) If, under subsection (2), the agency refuses to deal with the access application, it has to give the applicant written notice of the refusal without delay.
- (4) The notice has to give details of —

- (a) the reasons for the refusal and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings are based; and
- (b) the rights of review under this Act and the procedure to be followed to exercise those rights.

21. Application for personal information about applicant, consideration of

If the applicant has requested access to a document containing personal information about the applicant, the fact that matter is personal information about the applicant must be considered as a factor in favour of disclosure for the purpose of making a decision as to —

- (a) whether it is in the public interest for the matter to be disclosed; or
- (b) the effect that the disclosure of the matter might have.

22. Access, when agency must give

If the agency decides to give access to a document and the charges imposed for dealing with the application have been paid, the agency has to give the applicant access to the document.

23. Refusing access, grounds for

- (1) Subject to section 24 the agency may refuse access to a document if —
 - (a) the document is an exempt document; or
 - (b) the document is not a document of the agency; or
 - (c) giving access to the document would contravene a limitation referred to in section 7.
- (2) The agency may refuse access to the requested documents without having identified any or all of them and without

specifying the reason why matter in any particular document is claimed to be exempt matter if —

- (a) it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and
 - (b) there is no obligation under section 24 to give access to an edited copy of any of the documents.
- (3) Subject to section 24 the agency has to refuse access to a document that is the subject of an exemption certificate.
- (4) If a document contains personal information and the applicant, or the person to whom the information relates, is a child who has not turned 16, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the child and that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.
- (5) If a document contains personal information and the applicant, or the person to whom the information relates, is an intellectually handicapped person, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the person.

24. Exempt matter, deleting before access given

If —

- (a) the access application requests access to a document containing exempt matter; and
- (b) it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and

- (c) the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,

the agency has to give access to an edited copy even if the document is the subject of an exemption certificate.

25. Deferring access, grounds for

- (1) The agency may defer giving access to a document for a reasonable period if the document —
 - (a) is required by law to be published but is yet to be published; or
 - (b) has been prepared for presentation to Parliament or submission to a particular person or body but is yet to be presented or submitted.
- (2) The applicant has to be notified under section 30(d) of the likely period for which access is to be deferred.

26. Documents that cannot be found or do not exist, notice of

- (1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if —
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency is satisfied that the document —
 - (i) is in the agency's possession but cannot be found; or
 - (ii) does not exist.
- (2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document.

27. Ways in which access can be given

- (1) Access to a document may be given to the applicant in one or more of the following ways —
 - (a) by giving a reasonable opportunity to inspect the document; or
 - (b) by giving a copy of the document; or
 - (c) in the case of a document from which sounds or visual images can be reproduced, whether or not with the aid of some other article or device — by making arrangements for the sounds or visual images to be heard or viewed; or
 - (d) in the case of a document from which words can be reproduced in the form of sound — by giving a written transcript of the words recorded in the document; or
 - (e) in the case of a document in which words are contained in the form of shorthand writing or in encoded form — by giving a written transcript of the words contained in the document; or
 - (f) in the case of a document from which words can be reproduced in the form of a written document — by giving a written document so reproduced; or
 - (g) in the case of electronically, mechanically or magnetically stored information — by giving a written expression of the information in the form in which it is commonly available in the agency, or if there is no such common form, then in a form no less comprehensible than could be made available to the persons in the agency.
- (2) If the applicant has requested that access to a document be given in a particular way the agency has to comply with the request unless giving access in that way —
 - (a) would interfere unreasonably with the agency's other operations; or

- (b) would damage or harm the document or would be inappropriate because of the physical nature of the document; or
- (c) would involve an infringement of copyright belonging to a person other than the State,

in which case access may be given in some other way.

- (3) If the applicant has requested that access to a document be given in a particular way and access is given in some other way, the applicant is not required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay if access had been given in the way that was requested.
- (4) This section does not prevent the agency from giving access to a document in any way agreed on between the agency and the applicant.

28. Medical and psychiatric information about applicant, giving access to

If —

- (a) a document to which the agency has decided to give access contains information of a medical or psychiatric nature concerning the applicant; and
- (b) the principal officer of the agency is of the opinion that disclosure of the information to the applicant may have a substantial adverse effect on the physical or mental health of the applicant,

it is sufficient compliance with this Act if access to the document is given to a suitably qualified person nominated in writing by the applicant and the agency may withhold access until a person who is, in the opinion of the agency, suitably qualified is nominated.

29. Personal information about applicant, agency's duties when giving access to

If the agency gives the applicant access to personal information about the applicant the agency has to take reasonable steps to —

- (a) satisfy itself of the identity of the applicant; and
- (b) ensure that only the applicant or the applicant's agent, nominated in writing, receives the document.

30. Notice under s. 13(1)(b) of decision, form etc. of

The notice that the agency gives the applicant under section 13(1)(b) has to give details, in relation to each decision, of —

- (a) the day on which the decision was made; and
 - (b) the name and designation of the officer who made the decision; and
 - (c) if the decision is that a document is an exempt document and that access is to be given to a copy of the document from which exempt matter has been deleted under section 24 —
 - (i) the fact that access is to be given to an edited copy; and
 - (ii) the reasons for classifying the matter as exempt matter and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based;
- and
- (d) if the decision is that access to a document is to be deferred — the reasons for the deferral and, if applicable, the period for which access is likely to be deferred; and
 - (e) if the decision is to give access to a document in the manner referred to in section 28 — the arrangements to be made for giving access to the document; and

- (f) if the decision is to refuse access to a document — the reasons for the refusal and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
- (g) if the decision is that the applicant is liable to pay a charge to the agency — the amount of the charge and the basis on which the amount was calculated; and
- (h) the rights of review and appeal (if any) under this Act and the procedure to be followed to exercise those rights.

31. Certain exempt matter (Sch. 1 cl. 1, 2 or 5), giving information about existence etc. of

- (1) Nothing in this Act requires the agency to give information as to the existence or non-existence of a document containing matter that would be exempt matter under clause 1, 2 or 5 of Schedule 1.
- (2) If the access application relates to a document that includes, or would if it existed include, exempt matter of a kind referred to in subsection (1), the agency may give written notice to the applicant that the agency neither confirms nor denies the existence, as a document of the agency, of such a document but that, assuming the existence of such a document, it would be an exempt document and, where such a notice is given —
 - (a) section 30 applies as if the decision to give such a notice were a decision referred to in that section; and
 - (b) for the purposes of this Act, the decision is to be regarded as a refusal of access to the document because the document would, if it existed, be an exempt document.

Division 3 — Consultation with third parties

32. Personal information about third party, when access to may be given

- (1) This section applies to a document that contains personal information about an individual (the *third party*) other than the applicant.
- (2) The agency is not to give access to a document to which this section applies unless the agency has taken such steps as are reasonably practicable to obtain the views of —
 - (a) the third party; or
 - (b) if the third party is dead, his or her closest relative,as to whether the document contains matter that is exempt matter under clause 3 of Schedule 1.
- (3) If the third party, or the closest relative of a dead third party, is a child who has not turned 16 and who, in the agency's opinion, does not have the capacity to appreciate the circumstances and make a mature judgment as to the nature and significance of the document, the views of the child's guardian, or the person who has custody or care and control of the child, may be obtained for the purposes of subsection (2).
- (4) If the third party, or the closest relative of a dead third party, is an intellectually handicapped person, the views of the person's closest relative or guardian may be obtained for the purposes of subsection (2).
- (5) Where the views of a person are obtained under subsection (2)(b) that person is to be regarded as being the third party for the purposes of Division 5 and Part 4.
- (6) This section does not apply if access is given to a copy of the document from which the personal information referred to in subsection (1) has been deleted under section 24.

33. Commercial etc. information of third party, when access to may be given

- (1) This section applies to a document that contains —
 - (a) information concerning the trade secrets of; or
 - (b) information (other than trade secrets) that has a commercial value to; or
 - (c) any other information concerning the business, professional, commercial or financial affairs of,a person (the *third party*) who is not the applicant.
- (2) The agency is not to give access to a document to which this section applies unless the agency has taken such steps as are reasonably practicable to obtain the views of the third party as to whether the document contains matter that is exempt matter under clause 4 of Schedule 1.
- (3) An agency is not a third party for the purposes of this Part or Part 4.
- (4) This section does not apply if access is given to a copy of the document from which the information referred to in subsection (1) has been deleted under section 24.

34. Consultation under s. 32 or 33, procedure after

- (1) If —
 - (a) the agency obtains the views of a third party in relation to a document under section 32 or 33; and
 - (b) those views are that the document contains matter that is exempt matter under clause 3 or 4 of Schedule 1; and
 - (c) the agency decides to give access to the document,the agency has to —
 - (d) give the third party written notice of the decision without delay; and

- (e) defer giving access to the document until the decision is final.
- (2) The notice that the agency gives under subsection (1)(d) has to give details of —
- (a) the day on which the decision was made; and
 - (b) the name and designation of the person who made the decision; and
 - (c) the reasons for the decision to give access despite the views of the third party and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
 - (d) the rights of review and appeal under this Act and the procedure to be followed to exercise those rights.
- (3) If the agency has given a notice to a third party under subsection (1)(d) in relation to a document, the notice that the agency gives the applicant under section 13(1)(b) has to inform the applicant —
- (a) that a third party believes that the document is an exempt document; and
 - (b) that access to the document will be deferred until the decision is final.
- (4) For the purposes of this section an agency's decision to give access to a document is final if —
- (a) the time prescribed by Division 5 of this Part or Division 3 of Part 4 for third parties to lodge applications for review of the agency's decision, or make complaints against the agency's decision, has elapsed and no application or complaint has been made by a third party; or
 - (b) the time prescribed by Division 3 of Part 4 for third parties to make complaints against a decision made under Division 5 of this Part confirming the agency's

decision has elapsed and no complaint has been made by a third party; or

- (c) the time prescribed under Division 5 of Part 4 for lodging an appeal arising out of a decision under Division 3 of Part 4 relating to the agency's decision, or to a review of the agency's decision, has elapsed and no appeal has been lodged; or
- (d) on the determination of an appeal under Division 5 of Part 4 the agency's decision has been confirmed.

35. Consultation under s. 32 or 33, Commissioner may waive

- (1) The agency may apply to the Commissioner for approval to make its decision on whether to give access to a document without complying with section 32 or 33, and the Commissioner may give approval on being satisfied that —
 - (a) it would be unreasonable to require the views of third parties to be obtained having regard to the number of third parties that would have to be consulted; and
 - (b) the document does not contain matter that is exempt matter under clause 3 or 4 of Schedule 1.
- (2) The agency may proceed in accordance with approval given under subsection (1).

Division 4 — Exemption certificates

36. Premier may issue certificate

- (1) The Premier may sign an exemption certificate stating that a document mentioned in the certificate contains matter that is exempt matter under a specified provision of clause 1 or 2 of Schedule 1.
- (2) An exemption certificate may be issued in a form that neither confirms nor denies the existence of a document but states that if it did exist it would contain matter that would be exempt

matter under a specified provision of clause 1 or 2 of Schedule 1.

37. Effect of certificate

- (1) An exemption certificate establishes, without the need for further proof, that the document mentioned in the certificate contains matter that is exempt matter under the provision mentioned in the certificate, or would, if it existed, contain matter that would be exempt matter under the provision so mentioned.
- (2) Subsection (1) does not apply to section 77, 85(2) or 87(2).

38. Duration of certificate

- (1) An exemption certificate ceases to have effect at the end of 2 years after it is signed unless —
 - (a) it is withdrawn by the Premier; or
 - (b) it ceases to have effect under section 77; or
 - (c) it ceases to apply by reason of an order under section 87(2),before the end of that period.
- (2) Subsection (1), other than paragraph (c), does not prevent the Premier from signing a further exemption certificate in respect of the same document.

Division 5 — Internal review of decisions as to access

39. Review of decision under this Part, right to

- (1) A person who is aggrieved by a decision made by an agency under this Part in relation to an access application has a right to have the decision reviewed by the agency.
- (2) A person is aggrieved by a decision —
 - (a) if the person is the access applicant and the effect of the decision is to —

- (i) give access to an edited copy of a document; or
 - (ii) refuse to deal with the access application; or
 - (iii) refuse access to a document; or
 - (iv) defer the giving of access to a document; or
 - (v) give access to a document in the manner referred to in section 28 or withhold access under that section; or
 - (vi) impose a charge, or require a deposit, that the applicant considers to be unreasonable;
- or
- (b) if the person is a third party whose views were or should have been obtained under section 32 or 33, and the decision conflicts with the person's views.
- (3) Review under this Division is not available in respect of —
- (a) a decision made by an agency's principal officer; or
 - (b) a decision made on an application for review under this Division.

40. Application for review

- (1) An application for review has to —
- (a) be in writing; and
 - (b) give particulars of the decision which the aggrieved person wishes to have reviewed; and
 - (c) give an address in Australia to which notices under this Act can be sent; and
 - (d) give any other information or details required under the regulations; and
 - (e) be lodged at an office of the agency.
- (2) An aggrieved person may lodge an application for review within 30 days after being given written notice of the decision.

- (3) If the application for review is made by the access applicant the principal officer of the agency may allow the application to be lodged after the period mentioned in subsection (2) has expired.

41. Who is to deal with application for review

An application for review of a decision is not to be dealt with by the person who made that decision or by a person who is subordinate to that person.

42. How application for review to be dealt with

An application for review has to be dealt with as if it were an access application and the provisions of Divisions 2, 3 and 4 apply accordingly.

43. Decision can be confirmed, varied or reversed on review

- (1) On an application for review the agency may decide to confirm, vary or reverse the decision under review.
- (2) If the agency fails to give notice of its decision on the application for review within 15 days after it is lodged, or such longer period as is agreed between the agency and the access applicant, the agency is to be taken to have decided to confirm the decision under review.

44. No charge for review

No application fee or other charge is payable in respect of an application for review under this Division.

Part 3 — Amendment of personal information

Division 1 — Applications for amendment

45. Right to apply for information to be amended

- (1) An individual (the *person*) has a right to apply to an agency for amendment of personal information about the person contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading.
- (2) A dead person's closest relative has a right to apply to an agency for amendment of personal information about the dead person and this section has effect as if the information were information about the closest relative.
- (3) If the circumstances of the person require it, the agency has to take reasonable steps to help the person make an application for amendment in a manner that complies with this Act.
- (4) In particular, if an application for amendment does not comply with the requirements of section 46 the agency has to take reasonable steps under subsection (3) to help the person to change the application so that it complies with those requirements.
- (5) This section does not apply if another enactment provides a means or procedure by which the person can have the information amended.

46. Application for amendment, form etc. of

- (1) The application for amendment has to —
 - (a) be in writing; and
 - (b) give enough details to enable the document that contains the information to be identified; and
 - (c) give details of the matters in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading; and

- (d) give the person's reasons for holding that belief; and
 - (e) give details of the amendment that the person wishes to have made; and
 - (f) give an address in Australia to which notices under this Act can be sent; and
 - (g) give any other information or details required under the regulations; and
 - (h) be lodged at an office of the agency.
- (2) For the purposes of subsection (1)(e) the application has to state whether the person wishes the amendment to be made by —
- (a) altering information;
 - (b) striking out or deleting information;
 - (c) inserting information;
 - (d) inserting a note in relation to information,
- or in 2 or more of those ways.

47. Document held etc. by another agency, transferring application in case of

- (1) If the agency does not hold the document containing the information but knows that the document is held by another agency, the agency may transfer the application for amendment to the other agency.
- (2) If the agency holds the document containing the information but the document originated with or was received from another agency, and is more closely related to the functions of that other agency, the agency may transfer the application for amendment to that other agency together with a copy of the document.
- (3) The transferring agency is to give the person written notice of the transfer without delay.
- (4) The notice is to clearly state the day on which, and the agency to which, the application was transferred.

- (5) The agency to which the application is transferred is to be regarded as having received the application on the day on which it was received by the transferring agency.

48. Amending information, ways of

- (1) If the agency decides to amend the information it may make the amendment by —
- (a) altering information; or
 - (b) striking out or deleting information; or
 - (c) inserting information; or
 - (d) inserting a note in relation to information,
- or in 2 or more of those ways.
- (2) If the agency inserts a note in relation to information the note has to —
- (a) give details of the matters in relation to which the information is inaccurate, incomplete, out of date or misleading; and
 - (b) if the information is incomplete or out of date — set out whatever information is needed to complete the information or bring it up to date.
- (3) The agency is not to amend information under subsection (1) in a manner that —
- (a) obliterates or removes the information; or
 - (b) results in the destruction of a document containing the information,

unless the Commissioner has certified in writing that it is impracticable to retain the information or that, in the opinion of the Commissioner, the prejudice or disadvantage that the continued existence of the information would cause to the person outweighs the public interest in maintaining a complete record of information.

- (4) Before information is amended under subsection (1) in a manner that —
- (a) obliterates or removes the information; or
 - (b) results in the destruction of a document containing the information,

and that contravenes the *State Records Act 2000*, a record keeping plan made under that Act or the archives keeping plan made under that Act, the Commissioner shall provide the State Records Commission with a copy of the certificate issued by the Commissioner under subsection (3).

[Section 48 amended by No. 53 of 2000 s. 9.]

49. Decision on application, notice of

- (1) The agency has to give the person written notice of its decision on the application for amendment.
- (2) Section 13 applies with any necessary modifications to a notice under subsection (1) except that the references to 45 days are to be read as references to 30 days.
- (3) Section 30(a) and (b) apply to a notice under subsection (1).
- (4) If the agency decides to amend the information the notice has to give details of the amendment made.
- (5) If the agency decides not to amend the information in accordance with the application the notice has to give details of —
 - (a) the reasons for the decision and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
 - (b) the rights of review and appeal under this Act and the procedure to be followed to exercise those rights; and
 - (c) the right to request that a notation or attachment be made to the information and the procedure to be followed to exercise that right.

- (6) If the application was transferred to the agency under section 47 and the agency decides to amend the information, the agency has to give a copy of the notice to the transferring agency.

50. If application for amendment refused, applicant may request notation etc. disputing accuracy of information etc.

- (1) If the agency decides not to amend the information in accordance with the application the person may, in writing, request the agency to make a notation or attachment to the information —
- (a) giving details of the matters in relation to which the person claims the information is inaccurate, incomplete, out of date or misleading; and
 - (b) if the person claims the information is incomplete or out of date — setting out the information that the person claims is needed to complete the information or bring it up to date.
- (2) A request may be made under this section whether or not the person has taken steps to have the agency's decision reviewed under Part 4.
- (3) The agency has to comply with the request unless it considers that the notation or attachment that the person has requested to be made to the information is defamatory or unnecessarily voluminous.
- (4) If the agency decides not to comply with the request it has to give the person written notice of its decision giving details of —
- (a) the reasons for the decision and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
 - (b) the rights of review under this Act and the procedure to be followed to exercise those rights.

- (5) This section does not prevent the agency from making the requested notation or attachment in an edited or abbreviated form, but the making of an edited or abbreviated notation or attachment does not constitute compliance with the request for the purposes of subsection (4).

51. Claim that information is inaccurate etc., agency to give notice of in some cases

- (1) If after a request is made under section 50 the agency discloses the information to another person (including another agency) the agency has to give that other person a statement that a claim has been made under this Act that the information is inaccurate, incomplete, out of date or misleading.
- (2) If a notation or attachment has been made under section 50 particulars of the notation or attachment have to be included in or attached to the statement given under subsection (1).

52. Reasons for not amending information, agency may add to notation

This Division does not prevent the agency from adding to a notation or attachment made under section 50 the agency's reasons for deciding not to amend the information in accordance with the application, or from including those reasons in, or attaching them to, a statement given under section 51(1).

53. No charge for application or request

No fee or other charge is payable in respect of an application or request under this Division.

Division 2 — Internal review of decisions as to amendment of information

54. Review of decision under Div. 1, right to etc.

- (1) If under Division 1 an agency decides —
 - (a) not to amend information in accordance with an application for amendment; or
 - (b) not to comply with a request to make a notation or attachment to information,

the applicant for amendment has a right to have the decision reviewed by the agency.
- (2) Sections 39(3), 40, 41, 43 and 44 apply with any necessary modifications to an application for review under this Division.
- (3) An application for review is to be dealt with as if it were an application for amendment or a request for a notation or attachment to be made to information, as the case may require, and the provisions of Division 1 apply accordingly.

Part 4 — External review of decisions; appeals

Division 1 — Information Commissioner

55. Office established etc.

- (1) An office of Information Commissioner is created.
- (2) The office is not an office in the Public Service.

56. Appointment, terms and conditions

- (1) The Commissioner is to be appointed by the Governor.
- (2) Subject to this Division, the Commissioner holds office for a period, not exceeding 7 years, fixed by the instrument of appointment and is eligible for one or more further appointments.
- (3) Subject to the *Salaries and Allowances Act 1975*, the Commissioner is entitled to be paid such remuneration as is determined by the Governor.
- (3a) Remuneration paid to the Commissioner under subsection (3) is to be charged to the Consolidated Account² and this subsection appropriates the Consolidated Account² accordingly.
- (4) The rate of remuneration of the Commissioner is not to be reduced during a term of office without the Commissioner's consent.
- (5) The Commissioner is entitled to such leave of absence as the Governor determines.
- (6) Subject to this Division the Governor may determine other terms and conditions of service (if any) that apply to the Commissioner.

[Section 56 amended by No. 49 of 1996 s. 54.]

57. Resignation

The Commissioner may resign from office by a signed notice of resignation addressed to the Governor and the resignation takes effect on the day on which the notice is received by the Governor or on such later day as is specified in the notice.

58. Suspension and removal

- (1) If the Governor is satisfied that the Commissioner —
 - (a) is physically or mentally incapable of performing the duties of the office of Commissioner; or
 - (b) has shown incompetence or neglect in performing those duties; or
 - (c) has been guilty of misbehaviour,the Governor may suspend the Commissioner from office.
- (2) In subsection (1)(c) *misbehaviour* includes conduct that renders the Commissioner unfit to hold office as Commissioner whether or not the conduct relates to any function of the office.
- (3) After being suspended from office under subsection (1) the Commissioner is entitled to be restored to office unless —
 - (a) a statement of the grounds of suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and
 - (b) each House of Parliament, during the session in which the statement is so laid, and within 30 days of it being so laid, passes an address praying for the removal of the Commissioner from office.
- (4) If the Commissioner is suspended from office under subsection (1) and is not restored to office under subsection (3), the office of Commissioner becomes vacant.

59. Acting Information Commissioner, appointing etc.

- (1) The Governor may appoint a person to act in the office of the Commissioner in such cases or in the circumstances set out in this section, and the person so appointed is to be known as the Acting Information Commissioner.
- (2) An appointment may be made under this section —
 - (a) when the Commissioner is on leave of absence, or is unable to perform the functions of the office of Commissioner, or is absent from the State; or
 - (b) when the Commissioner has been suspended; or
 - (c) when the office of Commissioner is vacant,but an Acting Commissioner is not to so act for a period exceeding 12 months.
- (3) The Acting Commissioner, while so acting, may exercise the functions of the Commissioner, and anything done by the Acting Commissioner in so exercising those functions has the like effect as if it were done by the Commissioner.
- (4) The Acting Commissioner is entitled to such remuneration and allowances and leave of absence as the Governor may determine.
- (5) An appointment under this section —
 - (a) may be made at any time and may be terminated at any time by the Governor;
 - (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

60. Oath or affirmation of office

- (1) Before commencing to perform the functions of the office of Commissioner or Acting Commissioner a person has to take an oath or make an affirmation that he or she will faithfully and impartially perform the functions of the office, and that he or

she will not, except in accordance with this Act, divulge any information received under this Act.

- (2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.
- (3) If the office of Speaker is vacant or the Speaker is absent or otherwise unable to administer the oath or affirmation, the President of the Legislative Council is to administer the oath or affirmation.
- (4) If subsections (2) and (3) do not enable the oath or affirmation to be administered, it is to be administered by a person appointed by the Governor for the purpose.

61. Staff, appointment of etc.

- (1) The Governor may, on the recommendation of the Commissioner, appoint such staff as are necessary for the performance of the Commissioner's functions.
- (2) Subject to this Act the terms and conditions of service of a person appointed under subsection (1) are those determined by the Governor.
- (3) Part 3 of the *Public Sector Management Act 1994* does not apply to a person appointed under subsection (1).
- (4) The Commissioner may by arrangement with the Minister concerned and, if appropriate, the employing authority, within the meaning of the *Public Sector Management Act 1994*, of the officer or employee, make use, either full-time or part-time, of the services of any officer or employee employed in the Public Service or in a State instrumentality or otherwise in the service of the Crown in right of the State.
- (5) Before commencing to carry out his or her duties under this Act a person who is appointed under subsection (1), or whose services are used under subsection (4), has to take an oath or make an affirmation that he or she will faithfully and impartially

perform those duties, and that he or she will not, except in accordance with this Act, divulge any information received under this Act.

- (6) The oath or affirmation has to be administered by the Commissioner.

[Section 61 amended by No. 32 of 1994 s. 19.]

62. Commissioner and staff, additional provisions about

- (1) In this section **relevant office** means the office of Commissioner or an office or position under section 61(1).
- (2) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*³ immediately before being appointed to a relevant office the person may continue to be a contributor under that Act after being appointed.

[(3) deleted]

- (4) If a person occupied an office in the Public Service immediately before being appointed to a relevant office, the person retains existing and accruing entitlements in respect of leave of absence as if service in the relevant office were a continuation of service in the office in the Public Service.
- (5) If a person occupied an office in the Public Service immediately before being appointed to the office of Commissioner, the person is entitled to be appointed to an office in the Public Service, not lower in classification and salary than the office which the person occupied if —
- (a) the person ceases to hold office as Commissioner on the completion of a periodical appointment; and
 - (b) at that time the person is eligible to occupy an office in the Public Service.
- (6) A person who ceases to hold a relevant office and becomes the holder of an office in the Public Service retains existing and

accruing entitlements in respect of leave of absence as if service in the Public Service were a continuation of service in the relevant office.

[Section 62 amended by No. 57 of 1997 s. 62(2).]

Division 2 — Functions of Information Commissioner

63. Functions

- (1) The main function of the Commissioner is to deal with complaints made under this Part about decisions made by agencies in respect of access applications and applications for amendment of personal information.
- (2) The functions of the Commissioner also include —
 - (a) imposing reductions of time under section 13(4) and allowing extensions of time under section 13(5) or (7);
 - (b) giving approvals under section 35(1);
 - (c) issuing certificates under section 48(3);
 - (d) ensuring that agencies are aware of their responsibilities under this Act;
 - (e) ensuring that members of the public are aware of this Act and their rights under it;
 - (f) providing assistance to members of the public and agencies on matters relevant to this Act.
- (3) If in dealing with a complaint the Commissioner forms the opinion that there is evidence that an officer of an agency has been guilty of a breach of duty, or of misconduct, in the administration of this Act, the Commissioner may take such steps as he or she considers appropriate to bring the evidence to the notice of —
 - (a) if the person is the principal officer of the agency but is not a Minister — the Minister responsible for the agency; or

- (aa) if the person is the principal officer of a contractor or subcontractor — the Minister to whom the administration of the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981* is committed, as is relevant to the case; or
- (b) if the person is a Minister — the Parliament; or
- (c) in any other case — the principal officer of the agency.

[Section 63 amended by No. 43 of 1999 s. 20; No. 47 of 1999 s. 12.]

64. Powers

The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Commissioner's functions.

Division 3 — Complaints and procedure for dealing with them

65. Complaint against agency's decision, making

- (1) A complaint may be made against an agency's decision —
 - (a) to give access to a document; or
 - (b) to give access to an edited copy of a document; or
 - (c) to refuse to deal with an access application; or
 - (d) to refuse access to a document; or
 - (e) to defer the giving of access to a document; or
 - (f) to give access to a document in the manner referred to in section 28 or withhold access under that section; or
 - (g) to impose a charge or require the payment of a deposit.
- (2) A complaint under subsection (1) may be made by —
 - (a) the access applicant; or
 - (b) a third party.

- (3) A complaint may be made against an agency's decision —
 - (a) not to amend information in accordance with an application for amendment under Part 3; or
 - (b) not to comply with a request by the applicant for amendment to make a notation or attachment to information.
- (4) A complaint under subsection (3) may be made by the applicant for amendment.

66. Complaint, form etc. of

- (1) A complaint has to —
 - (a) be in writing; and
 - (b) give particulars of the decision to which the complaint relates; and
 - (c) give an address in Australia to which notices under the Act can be sent; and
 - (d) give any other information or details required under the regulations; and
 - (e) be lodged at the office of the Commissioner.
- (2) An access applicant or applicant for amendment may lodge a complaint within 60 days after being given written notice of the decision.
- (3) A third party may lodge a complaint within 30 days after being given written notice of the decision.
- (4) The Commissioner may allow a complaint to be lodged after the period mentioned in subsection (2) or (3) has expired.
- (5) Subject to subsection (6), if internal review of a decision is available under Part 2 or 3 a complaint is not to be made in respect of the decision unless internal review has been applied for and completed.

- (6) The Commissioner may allow a complaint to be made even though internal review has not been applied for or has not been completed if the complainant shows cause why internal review should not be applied for or should not be completed.

67. Commissioner may decide not to deal with a complaint

- (1) The Commissioner may, at any time after receiving a complaint, decide not to deal with the complaint, or to stop dealing with the complaint, because —
- (a) it does not relate to a matter the Commissioner has power to deal with; or
 - (b) it is frivolous, vexatious, misconceived or lacking in substance.
- (2) If the Commissioner decides not to deal with the complaint, or to stop dealing with the complaint, the Commissioner has to inform the complainant, in writing, of the decision and the reasons for the decision.

68. Complaint, agency etc. to be notified of

- (1) The Commissioner has to notify the agency, in writing, of any complaint made under this Division unless a decision not to deal with it has been made under section 67.
- (2) If the complaint relates to an access application, notification of the complaint has to be given, in writing, by the agency —
- (a) in the case of a complaint made by the access applicant where the agency has decided to refuse access to a document, or give access to an edited copy of a document, on the grounds that matter in the document is exempt matter under clause 3 or 4 of Schedule 1 — to any third party;
 - (b) in the case of a complaint made by a third party — to the access applicant.

69. Complaint, who are parties to etc.

- (1) The complainant and the agency are parties to every complaint.
- (2) In the case of a complaint made by an access applicant any third party is entitled to be joined as a party on giving written notice to the Commissioner.
- (3) In the case of a complaint made by a third party the access applicant is entitled to be joined as a party on giving written notice to the Commissioner.
- (4) Without limiting section 70(1), if the Commissioner is satisfied that another person or body might be affected by a decision made on the complaint the Commissioner may obtain information or receive submissions from that person or body.

70. Complaint, procedure for dealing with

- (1) In order to deal with a complaint the Commissioner may obtain information from such persons and sources, and make such investigations and inquiries, as the Commissioner thinks fit.
- (2) Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commissioner permit, and the Commissioner is not bound by rules of evidence.
- (3) The Commissioner has to ensure that the parties to a complaint are given a reasonable opportunity to make submissions to the Commissioner.
- (4) The Commissioner may determine the procedure for investigating and dealing with complaints and give any necessary directions as to the conduct of the proceedings.
- (5) For example, the Commissioner may —
 - (a) deal with the complaint without holding formal proceedings or hearings;

- (b) direct that all submissions are to be in writing;
 - (c) require parties to attend compulsory conferences.
- (6) If a party is required or permitted to appear before the Commissioner the party may be represented by a legal practitioner or by any other person.

71. Complaint, conciliation etc. of

- (1) The Commissioner may, at any stage, suspend inquiries, investigations or other proceedings so that efforts can be made to resolve the complaint by conciliation or negotiation between the parties.
- (2) The Commissioner may give such directions and do such other things as the Commissioner thinks fit in order to facilitate the resolution of a complaint by negotiation or conciliation.
- (3) Without limiting subsection (2), the Commissioner may nominate a person to act as a conciliator in relation to a complaint.
- (4) A person nominated as a conciliator —
 - (a) may require the parties to the complaint to attend compulsory conferences; but
 - (b) does not have power to require the production of the requested documents or to require the provision of information.

72. Information etc. relevant to complaint, Commissioner's powers to obtain etc.

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to a complaint, the Commissioner may give to the person a written notice requiring the person —
 - (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or

- (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under subsection (1) has to state —
 - (a) the place at which the information or document is to be given or produced to the Commissioner; and
 - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (3) If the Commissioner has reason to believe that a person has information relevant to a complaint, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the complaint.

73. Examination on oath, powers as to

- (1) The Commissioner may administer an oath or affirmation to a person required under section 72 to attend before the Commissioner and may examine such a person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

74. Exempt matter etc., Commissioner to ensure non-disclosure of

- (1) In dealing with a complaint the Commissioner has to give such directions and do such things as the Commissioner thinks necessary to avoid the disclosure of —
 - (a) exempt matter; or
 - (b) information as to the existence or non-existence of a document containing matter exempt under clause 1, 2 or 5 of Schedule 1.

- (2) The Commissioner is not to include exempt matter, or information of a kind referred to in subsection (1)(b), in a decision on a complaint or in reasons given for the decision.
- (3) If the question of whether or not a document is a document of the agency is in issue, subsections (1) and (2) apply to the contents of the document as if those contents were exempt matter.

75. Document held by agency, Commissioner may require production of

- (1) The Commissioner may require an agency to produce a document for inspection so that the Commissioner can decide whether the document contains exempt matter or is a document of the agency.
- (2) The Commissioner has to do such things as the Commissioner thinks necessary to ensure that any document produced to the Commissioner under subsection (1) is not disclosed to a person other than a member of the staff of the Commissioner in the course of the performance of his or her duties as a member of that staff, and to ensure the return of the document to the agency that produced it when the complaint has been dealt with.

76. Commissioner's other powers and duties when dealing with complaint

- (1) In dealing with a complaint the Commissioner has, in addition to any other power, power to —
 - (a) review any decision that has been made by the agency in respect of the access application or application for amendment; and
 - (b) decide any matter in relation to the access application or application for amendment that could, under this Act, have been decided by the agency.
- (2) The Commissioner has to make a decision in writing —

- (a) confirming the agency's decision to which the complaint relates; or
 - (b) varying the agency's decision to which the complaint relates; or
 - (c) setting aside the agency's decision to which the complaint relates and making a decision in substitution for that decision.
- (3) The Commissioner has to make a decision on the complaint within 30 days after the complaint was made unless the Commissioner considers that it is impracticable to do so.
- (4) If it is established that a document is an exempt document, the Commissioner does not have power to make a decision to the effect that access is to be given to the document.
- (5) The Commissioner has to include in the decision the reasons for the decision and the findings on material questions of fact underlying those reasons, referring to the material on which those findings were based.
- (6) The Commissioner has to give a copy of the decision to each party.
- (7) The decision of the Commissioner is to be regarded as the decision of the agency and has effect accordingly.
- (8) The Commissioner has to arrange to have his or her decisions published in full or in an abbreviated, summary or note form whichever is appropriate in order to ensure that the public is adequately informed of the grounds on which such decisions are made.

77. Exemption certificate, review of grounds for etc.

- (1) If an exemption certificate has been given in respect of a document the Commissioner may, on the application of the access applicant, consider the grounds on which it is claimed that the document contains exempt matter or would, if it existed, contain exempt matter.

- (2) The agency is the respondent to an application under subsection (1) and the Premier is entitled to be a party to proceedings in relation to the application.
- (3) If, after considering the matter, the Commissioner is satisfied that there were no reasonable grounds for claiming that the document contains exempt matter or would, if it existed, contain exempt matter, the Commissioner has to make a decision to that effect, and has to include in the decision the reasons for the decision and the findings on material questions of fact underlying those reasons, referring to the material on which those findings were based.
- (4) If a decision is made under subsection (3), the exemption certificate ceases to have effect at the end of 28 days after the decision was made unless, before that time, the Premier notifies the Commissioner in writing that the certificate is confirmed.
- (5) The Premier has to cause a copy of a notice given under subsection (4) —
 - (a) to be laid before the Legislative Assembly and the Legislative Council within 5 sittings days of that House after it was given; and
 - (b) to be given to the access applicant.
- (6) A notice under subsection (4) has to give details of —
 - (a) the reasons for the decision to confirm the exemption certificate; and
 - (b) the findings on material questions of fact underlying those reasons, referring to the material on which those findings were based,and may be given in a form that neither confirms nor denies the existence of the document.
- (7) If the Premier withdraws the exemption certificate before the end of the period of 28 days referred to in subsection (4) the Premier has to notify the Commissioner and each party as soon as is practicable.

78. Question of law on complaint, referral of to Supreme Court

- (1) The Commissioner may refer to the Supreme Court any question of law that arises in the course of dealing with a complaint.
- (2) A question may be referred under this section on the Commissioner's own initiative or at the request of a party to the complaint.
- (3) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section and, in exercising that jurisdiction, may —
 - (a) as well as determining that question, determine any related or incidental question of law that it considers to be raised; or
 - (b) instead of determining that question, determine any other question of law that it considers to be more pertinent.
- (4) If a question of law is referred to the Supreme Court under this section, the Commissioner is not to —
 - (a) give a decision on the complaint to which the question is relevant while the reference is pending; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the decision of the Supreme Court on the question.
- (5) A party, other than the Commissioner or a party who has requested the reference, does not have to appear, be represented or make submissions at, or otherwise participate in, the hearing of a reference under this section, and a party who does not participate in a reference is not liable for any costs in relation to the reference.

Division 4 — General provisions as to the Information Commissioner and staff

79. Delegation by Commissioner to staff

The Commissioner may, in writing, delegate to a member of the staff of the Commissioner the performance of any of the functions of the Commissioner, other than the power to make a requirement or decision under section 75, 76 or 77 and the power to delegate under this section.

80. Protection from personal liability

The Commissioner, an Acting Commissioner and members of the staff of the Commissioner are not liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function under this Act.

81. Disclosure restriction under other law does not apply to disclosing to Commissioner; privileges of parties

- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to agencies, whether imposed under an enactment or other law, applies to the disclosure of information to the Commissioner for the purposes of Division 3.
- (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an agency, or an officer of an agency, to the Commissioner for the purposes of Division 3.
- (3) Subject to subsections (1) and (2), every party to a complaint has the same privileges in relation to the giving of evidence and the production of documents and things that he or she would have as a witness in proceedings before a court.

82. Disclosure etc. of information obtained under Act restricted

(1) In this section —

confidential information means information obtained in the course of the performance of functions under this Act.

(2) If a person who is or has been the Commissioner, the Acting Commissioner or a member of the staff of the Commissioner —

- (a) discloses any confidential information other than for the purposes of this Act or another written law or proceedings arising under or in relation to this Act or another written law; or
- (b) takes advantage of confidential information to benefit himself or herself or another person,

that person commits an offence.

Penalty: \$6 000.

[Section 82 amended by No. 50 of 2003 s. 64(2).]

83. Failure to give information etc. when required, offence

If a person who has been required under Division 3 to —

- (a) give information; or
- (b) produce a document; or
- (c) attend before the Commissioner or a conciliator,

refuses or fails, without reasonable excuse, to comply with the requirement, the person commits an offence.

Penalty:

- (a) for an individual — \$6 000;
- (b) for a body corporate — \$10 000.

[Section 83 amended by No. 50 of 2003 s. 64(3).]

84. Costs of parties to complaints

The costs incurred by a party to a complaint are payable by that party except that the Commissioner may order a party to pay any costs of another party that the Commissioner considers to be attributable to exceptional or unreasonable conduct of the first party.

Division 5 — Appeals to the Supreme Court

85. What may be appealed etc.

- (1) An appeal lies to the Supreme Court on any question of law arising out of any decision of the Commissioner on a complaint relating to an access application.
- (2) An appeal lies to the Supreme Court from a decision —
 - (a) of the Commissioner refusing or failing to make a decision of the kind mentioned in section 77(3); and
 - (b) by the Premier confirming an exemption certificate pursuant to section 77(4).
- (3) There is no appeal under subsection (1) in relation to a decision of the Commissioner as to —
 - (a) the deferral of the giving of access to a document;
 - (b) the charges to be imposed for dealing with the access application;
 - (c) the payment of a deposit under section 18.
- (4) An appeal lies to the Supreme Court on any question of law arising out of a decision of the Commissioner on a complaint relating to an application for amendment of personal information if the effect of the decision is that information is not to be amended in accordance with the application.
- (5) There is no appeal under subsection (4) in relation to a decision of the Commissioner as to whether or not to deal with a complaint or in relation to any other decision of the Commissioner not mentioned in subsection (4).

- (6) An appeal under subsection (1) or (4) may be brought by any party to the complaint.
- (6a) An appeal under subsection (2) may be brought by the access applicant.
- (7) An appeal may be lodged within the time prescribed or allowed under Rules of Court.

[Section 85 amended by No. 73 of 1994 s. 4.]

86. Parties to an appeal

- (1) The agency is a party to an appeal even if it is neither the appellant nor the respondent.
- (2) Any other party to the complaint is entitled to be joined as a party to an appeal under section 85(1) or (4) in accordance with Rules of Court.
- (3) A third party is entitled to be joined as a party to an appeal under section 85(2) in accordance with Rules of Court.

[Section 86 amended by No. 73 of 1994 s. 4.]

87. Court's powers on appeal

- (1) On the determination of an appeal under section 85(1), (2)(a) or (4) the Supreme Court may by order —
 - (a) confirm the Commissioner's decision; or
 - (b) vary the Commissioner's decision; or
 - (c) set aside the Commissioner's decision and —
 - (i) make a decision in substitution for that decision; or
 - (ii) remit the matter to the Commissioner for reconsideration with any direction or recommendation the Supreme Court thinks fit.
- (2) On the determination of an appeal under section 85(2)(b) the Supreme Court may order that an exemption certificate no longer apply to a document.

- (3) If it is established that a document is an exempt document the Supreme Court does not have power to make a decision to the effect that access is to be given to the document.

[Section 87 amended by No. 73 of 1994 s. 4.]

Division 6 — General provisions as to proceedings in the Supreme Court

88. Term used: review proceedings

In this Division —

review proceedings means proceedings under section 78 or 85.

89. Terms etc., Court may impose; costs

- (1) Subject to subsections (2) and (3), an order or decision made by the Supreme Court in review proceedings may be made on such terms and conditions (including terms and conditions as to costs) as the Supreme Court thinks fit.
- (2) If the agency is the appellant under section 85 it bears its own costs.
- (3) The Commissioner is liable for his or her own costs in relation to a reference under section 78 but otherwise is not liable for any costs in respect of his or her decisions or review proceedings.

90. Exempt matter etc., Court to ensure non-disclosure of

- (1) In hearing and determining review proceedings the Court has to avoid the disclosure of —
- (a) exempt matter; or
 - (b) information as to the existence or non-existence of a document containing matter exempt under clause 1, 2 or 5 of Schedule 1.
- (2) If in the opinion of the Supreme Court it is necessary to do so in order to prevent disclosure of exempt matter or matter of a kind

referred to in subsection (1)(b) the Supreme Court may receive evidence and hear argument in the absence of the public and any party or representative of a party.

- (3) The Supreme Court is not to include exempt matter, or information of a kind referred to in subsection (1)(b) in its decision in review proceedings or in reasons given for the decision.
- (4) If the question of whether or not a document is a document of the agency is in issue, subsections (1), (2) and (3) apply to the contents of the document as if those contents were exempt matter.

91. Document held by agency, Court may require production of etc.

- (1) For the purpose of hearing and determining review proceedings the Supreme Court may require the agency to produce a document in evidence before it.
- (2) The Supreme Court is entitled to access to and to view documents for the purpose of determining an appeal under section 85(2)(b).
- (3) The Supreme Court has to ensure that the confidentiality of a document produced under this section is maintained and arrange for its return to the agency when the review proceedings have been determined.

92. Disclosure restriction under other law does not apply to disclosing to Court

- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to agencies, whether imposed under an enactment or other law, applies to the disclosure of information for the purposes of review proceedings.

Freedom of Information Act 1992

Part 4 External review of decisions; appeals

Division 6 General provisions as to proceedings in the Supreme Court

s. 93

- (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an agency, or an officer of an agency, to the Supreme Court for the purposes of review proceedings.

93. Other procedure, Court may determine

To the extent that it is not prescribed by this Act or Rules of Court the procedure on review proceedings may be determined by the Supreme Court.

Part 5 — Publication of information about agencies

94. Term used: information statement

A reference in this Act to an *information statement*, in relation to an agency, is a reference to a statement that contains —

- (a) a statement of the structure and functions of the agency;
- (b) a description of the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public;
- (c) a description of any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the performance of the agency's functions;
- (d) a description of the kinds of documents that are usually held by the agency including —
 - (i) which kinds of documents can be inspected at the agency under a written law other than this Act (whether or not inspection is subject to a fee or charge); and
 - (ii) which kinds of documents can be purchased; and
 - (iii) which kinds of documents can be obtained free of charge;
- (e) a description of the agency's arrangements for giving members of the public access to documents mentioned in paragraph (d)(i), (ii) or (iii) including details of library facilities of the agency that are available for use by members of the public;
- (f) a description of the agency's procedures for giving members of the public access to the documents of the agency under Part 2 including —
 - (i) the designation of the officer or officers to whom initial inquiries as to access to documents can be made; and

- (ii) the address or addresses at which access applications can be lodged;
- (g) a description of the agency's procedures for amending personal information in the documents of the agency under Part 3 including —
 - (i) the designation of the officer or officers to whom initial inquiries as to amendment of personal information can be made; and
 - (ii) the address or addresses at which applications for amendment of personal information can be lodged.

95. Term used: internal manual

A reference in this Act to an *internal manual*, in relation to an agency, is a reference to —

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or
- (b) a document containing particulars of any administrative scheme; or
- (c) a document containing a statement of the manner, or intended manner, of administration of any written law or administrative scheme; or
- (d) a document describing the procedures to be followed in investigating any contravention or possible contravention of any written law or administrative scheme; or
- (e) any other document of a similar kind,

(other than a written law) that is used by the agency in connection with the performance of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject.

96. Information statement, each agency to publish annually

- (1) An agency (other than a Minister or an exempt agency) has to cause an up-to-date information statement about the agency to be published in a manner approved by the Minister administering this Act —
 - (a) within 12 months after the commencement of this Act; and
 - (b) at subsequent intervals of not more than 12 months.
- (2) In giving approval under subsection (1) the Minister has to have regard, amongst other things, to the need to assist members of the public to exercise their rights under this Act effectively.
- (3) In the case of an agency that comes into existence after the commencement of this Act the reference in subsection (1)(a) to the commencement of this Act is to be read as a reference to the time when the agency commences its operations.
- (4) A subcontractor does not have to comply with subsection (1) if the relevant contractor has complied with that subsection on behalf of the subcontractor.

[Section 96 amended by No. 47 of 1999 s. 13.]

97. Information statement and internal manual, each agency to make available etc.

- (1) An agency (other than a Minister or an exempt agency) has to cause copies of —
 - (a) its most up-to-date information statement; and
 - (b) each of its internal manuals,to be made available for inspection and purchase by members of the public but may delete any exempt matter from those copies.
- (2) An agency has to provide a copy of its information statement to the Commissioner as soon as is practicable after the statement is published under section 96.

s. 97

- (3) A subcontractor does not have to comply with subsections (1) and (2) if the relevant contractor has complied with those subsections on behalf of the subcontractor.

[Section 97 amended by No. 47 of 1999 s. 14.]

Part 6 — Miscellaneous

98. Child or handicapped person, applications on behalf of

Without limiting the ability of persons to make applications on behalf of other persons generally, an access application or application for amendment may be made —

- (a) on behalf of a child by the child's guardian or the person who has custody or care and control of the child;
- (b) on behalf of an intellectually handicapped person by the person's closest relative or guardian.

99. Defunct agency, performance of functions on behalf of

- (1) When an agency ceases to exist and its functions are taken over by another agency, the functions taken over include any outstanding responsibilities of the defunct agency under this Act.
- (2) When an agency ceases to exist and its functions are not taken over by another agency, any outstanding responsibilities of the defunct agency under this Act are to be performed by an agency nominated by the Minister administering this Act.
- (3) In this section *agency* does not include an exempt agency.

100. Who in agency makes its decisions

- (1) Decisions made under this Act by an agency are to be made by —
 - (a) the principal officer of the agency; or
 - (b) an officer of the agency directed by the principal officer for that purpose, either generally or in a particular case.
- (2) Subsection (1)(b) does not apply if the agency is a Minister.

s. 101

101. Notice sent by post or fax, presumed time of service of

- (1) If a notice under this Act is given to a person by post it is to be regarded as having been given to the person at the end of the fifth day after it was posted.
- (2) If a notice under this Act is given to a person by facsimile it is to be regarded as having been given to the person on the day on which it was transmitted.

102. Burden of proof

- (1) Except where subsection (2) or (3) applies, in any proceedings concerning a decision made under this Act by an agency, the onus is on the agency to establish that its decision was justified or that a decision adverse to another party should be made.
- (2) If a third party initiates or brings proceedings opposing the giving of access to a document, the onus is on the third party to establish that access should not be given or that a decision adverse to the access applicant should be made.
- (3) If, under a provision of Schedule 1, matter is not exempt matter if its disclosure would, on balance, be in the public interest, the onus is on the access applicant to establish that disclosure would, on balance, be in the public interest.

103. No review of decisions etc. except under this Act

Except as provided by this Act, none of the following is liable to be challenged, appealed against, reviewed, quashed or called in question in or by any court on any account —

- (a) an act, omission or decision of an agency, or any other thing done by an agency, under this Act;
- (b) an act, omission or decision of the Premier under Division 4 of Part 2 or under section 77;
- (c) an act, omission, decision or proceeding of the Commissioner, or any other thing done by the Commissioner.

104. Defamation or breach of confidence action, certain people protected from

- (1) If access to a document is given under a decision under this Act, and if the person who makes the decision believes, in good faith, when making the decision, that this Act permits or requires the decision to be made —
 - (a) an action for defamation or breach of confidence does not lie against the Crown, an agency or an officer of an agency merely because of the making of the decision or the giving of access; and
 - (b) an action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access does not lie against the author of the document or any other person by reason of the author or other person having supplied the document to an agency.
- (2) Subsection (1) applies even if, in giving access to the document, there has been a failure to comply with Division 3 of Part 2.
- (3) Neither the giving of access to a document under a decision under this Act nor the making of such a decision is to be regarded as constituting, for the purpose of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the document, or any matter it contains, by the person to whom access is given.

105. Criminal liability, certain people protected from

If access to a document is given under a decision under this Act, and the person who makes the decision believes, in good faith, when making the decision, that this Act permits or requires the decision to be made, neither the person who makes the decision nor any other person concerned in giving access to the document is guilty of an offence merely because of the making of the decision or the giving of access.

106. Personal liability, certain people protected from

- (1) A matter or thing done by —
- (a) an agency or the principal officer of an agency; or
 - (b) a person acting under the direction of an agency or the principal officer of an agency,

does not subject the principal officer or any person so acting personally to any action, liability, claim or demand so long as the matter or thing was done in good faith for the purposes of giving effect to this Act.

- (2) Subsection (1) applies even if, in giving access to a document, there has been a failure to comply with Division 3 of Part 2.

107. Failure to consult under Part 2 Div. 3, Crown etc. not liable in case of

An action does not lie against the Crown, an agency or an officer of an agency merely because of a failure to comply with Division 3 of Part 2 unless the person responsible for the failure is shown to have acted with malice and without reasonable cause.

108. Exempt matter does not have to be published

Without limiting section 97(1), this Act does not require exempt matter to be published or to be included in a notice or certificate under this Act.

109. Personal information of another etc., obtaining access to by deceit etc. is offence

A person who, in order to gain access to a document containing —

- (a) personal information about another person; or
- (b) information about the business, professional, commercial or financial affairs of another person,

knowingly deceives or misleads a person performing functions under this Act commits an offence.

Penalty:

- (a) for an individual — \$6 000;
- (b) for a body corporate — \$10 000.

[Section 109 amended by No. 50 of 2003 s. 64(3).]

110. Destroying document to prevent access, offence

A person who conceals, destroys or disposes of a document or part of a document or is knowingly involved in such an act for the purpose (sole or otherwise) of preventing an agency being able to give access to that document or part of it, whether or not an application for access has been made, commits an offence.

Penalty: \$6 000.

[Section 110 amended by No. 50 of 2003 s. 64(4).]

111. Annual report to Parliament

- (1) As soon as practicable after 30 June in each year the Commissioner is to submit a report to the Speaker of the Legislative Assembly and the President of the Legislative Council on the operation of this Act and the operations of the Commissioner during the year ending on that day (30 June).
 - (2) The report is to include in relation to each agency —
 - (a) the number of access applications received and dealt with; and
 - (b) the number of decisions to —
 - (i) give access to documents;
 - (ii) give access to edited copies of documents;
 - (iii) defer giving access to documents;
 - (iv) give access to a document in the manner referred to in section 28;
 - (v) refuse access to documents;
- and

s. 111

- (c) the number of times each of the clauses in Schedule 1 was used to characterize documents as exempt documents; and
 - (d) the number of applications for internal review under Part 2 and the results of the reviews; and
 - (e) the number of applications for amendment of personal information received and dealt with; and
 - (f) the number of decisions —
 - (i) to amend personal information in accordance with an application;
 - (ii) not to amend personal information in accordance with an application;and
 - (g) the number of applications for internal review under Part 3 and the results of the reviews; and
 - (h) the number of complaints made to the Commissioner and the results of the complaints; and
 - (i) the number of other applications made to the Commissioner and the results of those applications; and
 - (j) the number of appeals to the Supreme Court and the results of those appeals; and
 - (k) the amounts of fees and charges collected and details of fees and charges that were reduced or waived; and
 - (l) such other information as is prescribed.
- (3) Each agency has to —
- (a) provide the Commissioner with such information as the Commissioner requires for the purpose of preparation of a report under this section; and
 - (b) comply with any prescribed requirements concerning the providing of that information and the keeping of records for the purposes of this section.

- (4) The Commissioner has to include in the report any recommendations of the Commissioner as to legislative or administrative changes that could be made to help the objects of this Act to be achieved.
- (5) The Speaker or the President has to cause a copy of a report submitted by the Commissioner to be laid before the Legislative Assembly or Legislative Council, as the case may be, within 15 sitting days of that House after the report is submitted.

112. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for achieving the objects and giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) and subject to section 16, regulations may be made prescribing —
 - (a) fees for lodging access applications; and
 - (b) charges for dealing with access applications or rates to be used in calculating such charges.
- (3) In the making of regulations under subsection (2) (as read with section 45 of the *Interpretation Act 1984*) regard has to be had to the need to ensure that fees and charges are reasonable and as low as is practicable, and special regard has to be had to —
 - (a) the need to ensure that financially disadvantaged persons are not precluded from exercising their rights under this Act merely because of financial hardship; and
 - (b) the particular relationship between a person and documents containing personal information about that person.
- (4) Without limiting subsection (1), regulations may be made —
 - (a) as to the way in which access applications and applications for amendment relating to electronically stored information may be dealt with and as to the way

s. 113

in which access to such information may be provided and the way in which such information may be amended;

- (b) as to the nomination of persons for the purposes of section 28 and as to the qualifications of such persons for nomination.

113. Review of Act

- (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from its commencement.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

[Part 7 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 — Exempt matter

[Glossary cl. 1]

[Heading amended by No. 19 of 2010 s. 4.]

1. Cabinet and Executive Council, deliberations etc. of

- (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; or
 - (b) contains policy options or recommendations prepared for possible submission to an Executive body; or
 - (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; or
 - (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;
- or
- (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).
- (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

cl. 2

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

[Clause 1 amended by No. 57 of 1997 s. 62(3); No. 19 of 2010 s. 59.]

2. Inter-governmental relations, matter that could damage etc.

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

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

[Clause 2 amended by No. 19 of 2010 s. 59.]

3. Personal information

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

[Clause 3 amended by No. 19 of 2010 s. 59.]

cl. 4

4. Trade secrets, commercial and business information

- (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.
- (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.

[Clause 4 amended by No. 19 of 2010 s. 59.]

4A. Information given to Treasurer etc. under *Bank of Western Australia Act 1995*

Matter is exempt matter if it consists of information provided to —

- (a) the Treasurer under the *Bank of Western Australia Act 1995* section 22; or

- (b) the Minister under the *Bank of Western Australia Act 1995* section 42O.

[Clause 4A inserted by No. 14 of 2012 s. 9.]

5. Law enforcement, public safety and property security, matter prejudicial etc. to

- (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; or
 - (b) prejudice an investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted; or
 - (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; or
 - (d) prejudice the fair trial of any person or the impartial adjudication of any case or hearing of disciplinary proceedings; or
 - (e) endanger the life or physical safety of any person; or
 - (f) endanger the security of any property; or
 - (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.

cl. 6

- (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; or
 - (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.

- (5) In this clause —

Commonwealth intelligence or security agency means —

- (a) the Australian Security Intelligence Organization; or
- (b) the Australian Secret Intelligence Service; or
- (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;

law means the law of this State, the Commonwealth, another State, a Territory or a foreign country or state.

[Clause 5 amended by No. 31 of 1993 s. 43; No. 11 of 1996 s. 41; No. 56 of 2004 s. 4; No. 19 of 2010 s. 59.]

6. Deliberative processes of Government etc., matter revealing

- (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.
- (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.

[Clause 6 amended by No. 19 of 2010 s. 59.]

7. Legal professional privilege, matter subject to

- (1) Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) Matter that appears in an internal manual of an agency is not exempt matter under subclause (1).

[Clause 7 amended by No. 19 of 2010 s. 59.]

8. Confidential communications

- (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.
- (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

cl. 9

(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.

[Clause 8 amended by No. 19 of 2010 s. 59.]

9. State's economy, matter adversely affecting management of etc.

- (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.

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

[Clause 9 amended by No. 19 of 2010 s. 59.]

10. State's financial or property affairs, matter adversely affecting etc.

- (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.
- (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.

[Clause 10 amended by No. 19 of 2010 s. 59.]

11. Effective operation of agencies, matter impairing etc.

- (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; or
 - (b) prevent the objects of any test, examination or audit conducted by an agency from being attained; or
 - (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.
- (2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

[Clause 11 amended by No. 19 of 2010 s. 59.]

12. Contempt of Parliament or court, matter that would be

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

cl. 13

- (a) be in contempt of court; or
- (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.

[Clause 12 amended by No. 19 of 2010 s. 59.]

13. Adoption or artificial conception information

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.

[Clause 13 amended by No. 19 of 2010 s. 59.]

14. Information protected by certain statutory provisions

- (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*; or
 - (b) section 64(2)(a), (2)(b) or (3) of the *Legal Aid Commission Act 1976*; or
 - (c) section 23(1) of the *Parliamentary Commissioner Act 1971*; or
 - (d) section 47 of the *Inspector of Custodial Services Act 2003*.
- (2) Matter is exempt matter if it is matter to which a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971* or section 48 of the *Inspector of Custodial Services Act 2003* applies.
- (3) Matter is exempt matter if its disclosure would reveal anything said or admitted for the purposes of negotiating the settlement of or conciliating a complaint under —
 - (a) Division 3A or 3 of Part 3; or
 - (b) administrative instructions under section 23,

of the *Health and Disability Services (Complaints) Act 1995*.

- (4A) Matter is exempt matter if its disclosure would reveal anything said or admitted for the purposes of negotiating the settlement of or conciliating a complaint under Division 2 of Part 6 of the *Disability Services Act 1993*.
- (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*.
- (5) Matter is exempt matter if its disclosure would reveal or tend to reveal the identity of anyone as —
- (a) a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*; or
 - (b) a person in respect of whom a disclosure of public interest information has been made under the *Public Interest Disclosure Act 2003*; or
 - (c) a person who has made, or a person who is mentioned in, a report under the *Children and Community Services Act 2004* section 124B(1); or
 - (d) a person who is a notifier as defined in the *Children and Community Services Act 2004* section 240(1), or a person about whom the information mentioned in that definition is given; or
 - (e) a person who has given, or a person who is mentioned in, a notification under the Commonwealth *Family Law Act 1975* section 67ZA(2) or (3) or the *Family Court Act 1997* section 160(2) or (3); or
 - (f) a person in respect of whom information is contained in the Community Protection Offender Register established under the *Community Protection (Offender Reporting) Act 2004* section 80.

[Clause 14 amended by No. 94 of 1994 s. 3; No. 50 of 1995 s. 3; No. 75 of 1995 s. 80(4); No. 13 of 1998 s. 34(2); No. 43 of 1999 s. 20; No. 29 of 2003 s. 28; No. 75 of 2003 s. 56(1); No. 26 of 2008 s. 13; No. 33 of 2010 s. 57; No. 19 of 2010 s. 59; No. 54 of 2012 s. 44.]

cl. 15

15. Precious metal transactions, information as to

- (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.

- (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.

[Clause 15 amended by No. 19 of 2010 s. 59.]

Schedule 2 — Exempt agencies

[Glossary cl. 1]

[Heading amended by No. 19 of 2010 s. 4.]

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 Auditor General and the Office of the Auditor General.

The Corruption and Crime Commission.

The Director of Public Prosecutions.

The Electoral Distribution Commissioners.

The Information Commissioner.

The Inspector of Custodial Services.

The Parliamentary Commissioner for Administrative Investigations.

The Parliamentary Inspector of the Corruption and Crime Commission.

The Prisoners Review Board.

The Supervised Release Review Board.

The State Government Insurance Corporation ⁴.

Any Royal Commission or member of a Royal Commission.

A special commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* ⁵.

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(1); No. 11 of 1996 s. 41; No. 29 of 1996 s. 26; No. 21 of 2002 s. 72; No. 48 of 2003 s. 62; No. 75 of 2003 s. 56(1); No. 78 of 2003 s. 74(2); No. 41 of 2006 s. 90; No. 43 of 2006 s. 6; No. 14 of 2014 s. 11.]

Glossary

[Section 9]

1. Terms used

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; or
- (b) any part of a record; or
- (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;

cl. 1

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; and
- (b) the principal officer of the agency; and
- (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; or
- (b) an organization specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*; or
- (c) the Police Force of Western Australia; or
- (d) a local government or a regional local government; or
- (e) a body or office that is established for a public purpose under a written law; or
- (f) a body or office that is established by the Governor or a Minister; or
- (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;

cl. 2

- (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;

relative, in relation to a person, includes a de facto partner of a person;

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.

[Clause 1 amended by No. 31 of 1993 s. 45(a); No. 32 of 1994 s. 19; No. 14 of 1996 s. 4; No. 43 of 1999 s. 20; No. 47 of 1999 s. 15; No. 53 of 2000 s. 10(1); No. 28 of 2003 s. 67.]

2. Separate agencies, which are

- (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.

[Clause 2 amended by No. 31 of 1993 s. 45(b); No. 11 of 1996 s. 41.]

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, which are

- (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

cl. 5

- (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, which are

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 units of Police Force and of Department of Corrective Services

- (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.

[Clause 6 amended by No. 31 of 1993 s. 45(b); No. 11 of 1996 s. 41.]

[7. Deleted by No. 53 of 2000 s. 10(2).]

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

- (1) In this clause —
- access regulation functions*** means the functions given by or under the *National Gas Access (WA) Act 2009*;
- arbitrator*** has the meaning given in section 61 of the *Energy Arbitration and Review Act 1998*;
- Authority*** means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;
- Board*** has the meaning given in section 49 of the *Energy Arbitration and Review Act 1998*.
- (2) A document —
- (a) that is in the possession or under the control of the Authority (because of its access regulation functions), the Board or an arbitrator; or

(b) to which the Authority (because of its access regulation functions), the Board or an arbitrator is entitled to access,

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

[Clause 7A inserted by No. 65 of 1998 Sch. 3 cl. 14; amended by No. 67 of 2003 s. 62; No. 16 of 2009 s. 70.]

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.



Notes

¹ This is a compilation of the *Freedom of Information Act 1992* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Freedom of Information Act 1992</i>	76 of 1992	15 Dec 1992	s. 1 and 2: 15 Dec 1992; Pt. 4 Div. 1 and 2: 11 Jun 1993 (see s. 2 and <i>Gazette</i> 11 Jun 1993 p. 2867); Act other than s. 1 and 2 and Pt. 4 Div. 1 and 2: 1 Nov 1993 (see s. 2 and <i>Gazette</i> 29 Oct 1993 p. 5881)
<i>Acts Amendment (Ministry of Justice) Act 1993</i> Pt. 10 ⁶	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>R & I Bank Amendment Act 1994</i> s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Perth International Centre for Application of Solar Energy Act 1994</i> s. 35	36 of 1994	8 Jul 1994	22 Jul 1994 (see s. 2 and <i>Gazette</i> 22 Jul 1994 p. 3727)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Freedom of Information Amendment Act 1994</i>	94 of 1994	5 Jan 1995	1 Nov 1994 (see s. 2)
<i>Young Offenders Act 1994</i> s. 236	104 of 1994	11 Jan 1995	13 Mar 1995 (see s. 2 and <i>Gazette</i> 10 Mar 1995 p. 895)
<i>Bank of Western Australia Act 1995</i> s. 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and 9(1) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Freedom of Information Amendment Act 1995</i>	50 of 1995	6 Nov 1995	1 Nov 1995 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Health Services (Conciliation and Review) Act 1995</i> s. 80(4)	75 of 1995	9 Jan 1996	16 Aug 1996 (see s. 2 and <i>Gazette</i> 16 Aug 1996 p. 4007)
Reprint of the Freedom of Information Act 1992 as at 16 Jan 1996 (includes amendments listed above except those in the <i>Health Services (Conciliation and Review) Act 1995</i>)			
<i>Witness Protection (Western Australia) Act 1996</i> s. 41	11 of 1996	28 Jun 1996	7 Dec 1996 (see s. 2 and <i>Gazette</i> 6 Dec 1996 p. 6699)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Official Corruption Commission Amendment Act 1996</i> s. 26	29 of 1996	28 Aug 1996	30 Aug 1996 (see s. 2 and <i>Gazette</i> 30 Aug 1996 p. 4365)
<i>Financial Legislation Amendment Act 1996</i> s. 54	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint of the Freedom of Information Act 1992 as at 8 Jul 1997 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 62	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Industry and Technology Development Act 1998</i> s. 34(2)	13 of 1998	20 May 1998	1 Jul 1998 (see s. 2 and <i>Gazette</i> 26 Jun 1998 p. 3369)
<i>Gas Pipelines Access (Western Australia) Act 1998</i> Sch. 3 Div. 6	65 of 1998	15 Jan 1999	9 Feb 1999 (see s. 2 and <i>Gazette</i> 8 Feb 1999 p. 441)
<i>Prisons Amendment Act 1999</i> Sch. 1 cl. 4	43 of 1999	8 Dec 1999	Sch. 1 cl. 4(1) and (3): 18 Dec 1999 (see s. 2(2) and <i>Gazette</i> 17 Dec 1999 p. 6175); Sch. 1 cl. 4(2): 18 Jun 2000 (see s. 2(3) and (4) and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 6	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)

Freedom of Information Act 1992

Short title	Number and year	Assent	Commencement
Reprint of the Freedom of Information Act 1992 as at 3 Mar 2000 (includes amendments listed above)			
<i>State Records (Consequential Provisions) Act 2000 Pt. 4</i>	53 of 2000	28 Nov 2000	1 Dec 2001 (see s. 2 and <i>Gazette</i> 30 Nov 2001 p. 6067)
<i>Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002 s. 72</i>	21 of 2002	15 Jul 2002	15 Jul 2002 (see s. 2)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 23</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Public Interest Disclosure Act 2003 s. 28</i>	29 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Corruption and Crime Commission Act 2003 s. 62⁷</i>	48 of 2003	3 Jul 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 64</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Inspector of Custodial Services Act 2003 s. 56(1)</i>	75 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003 s. 74(2)</i>	78 of 2003	22 Dec 2003	7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
Reprint 4: The Freedom of Information Act 1992 as at 10 Sep 2004 (includes amendments listed above)			
<i>Freedom of Information Amendment Act 2004</i>	56 of 2004	19 Nov 2004	19 Nov 2004 (see s. 2)
<i>Parole and Sentencing Legislation Amendment Act 2006 s. 90</i>	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2(1) and <i>Gazette</i> 29 Dec 2006 p. 5867)
<i>Perth International Centre for Application of Solar Energy Repeal Act 2006 s. 6</i>	43 of 2006	3 Oct 2006	31 Oct 2006

Short title	Number and year	Assent	Commencement
<i>Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008</i> s. 13	26 of 2008	19 Jun 2008	1 Jan 2009 (see s. 2(b) and <i>Gazette</i> 9 Dec 2008 p. 5107)
Reprint 5: The Freedom of Information Act 1992 as at 27 Feb 2009 (includes amendments listed above)			
<i>National Gas Access (WA) Act 2009</i> s. 70	16 of 2009	1 Sep 2009	1 Jan 2010 (see s. 2(b) and <i>Gazette</i> 31 Dec 2009 p. 5327)
<i>Standardisation of Formatting Act 2010</i> s. 4 and 59	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Health and Disability Services Legislation Amendment Act 2010</i> s. 57	33 of 2010	30 Aug 2010	30 Nov 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)
<i>Bank of Western Australia Amendment Act 2012</i> Pt. 3	14 of 2012	3 Jul 2012	11 Aug 2012 (see s. 2(b) and <i>Gazette</i> 10 Aug 2012 p. 3803)
<i>Community Protection (Offender Reporting) Amendment Act (No. 2) 2012</i> Pt. 3	54 of 2012	3 Dec 2012	23 Feb 2013 (see s. 2(b) and <i>Gazette</i> 22 Feb 2013 p. 1045)
Reprint 6: The Freedom of Information Act 1992 as at 1 Feb 2013 (includes amendments listed above except those in the <i>Community Protection (Offender Reporting) Amendment Act (No. 2) 2012</i> Pt. 3)			
<i>Electoral Amendment Act 2014</i> Pt. 3	14 of 2014	2 Jul 2014	3 Jul 2014 (see s. 2(b))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (ICWA) Act 1996</i> Sch. 1 it. 4 ⁸	45 of 1996	25 Oct 1996	To be proclaimed (see s. 2)

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 ⁹	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 33 ¹⁰	35 of 2014	9 Dec 2014	To be proclaimed (see s. 2(b))
<i>Declared Places (Mentally Impaired Accused) Act 2015</i> s. 86 ¹¹	4 of 2015	3 Mar 2015	To be proclaimed (see s. 2(b))

² Under the *Financial Management (Transitional Provisions) Act 2006* Sch. 2 cl. 13 a reference to the Consolidated Fund may, where the context so requires, be read as if it had been amended to be a reference to the Consolidated Account. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

³ The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

⁴ The State Government Insurance Corporation ceased to exist on 1 July 2012.

⁵ Repealed by the *Corruption and Crime Commission Amendment and Repeal Act 2003*.

⁶ The *Acts Amendment (Ministry of Justice) Act 1993* s. 68 is a savings provision that is of no further effect.

⁷ The *Corruption and Crime Commission Act 2003* Sch. 3 was renumbered as Sch. 4 by the *Corruption and Crime Commission Amendment and Repeal Act 2003* s. 35(12) and the reference to it in s. 62 was amended by the *Corruption and Crime Commission Amendment and Repeal Act 2003* s. 35(13).

⁸ On the date as at which this reprint was prepared, the *Acts Amendment (ICWA) Act 1996* Sch. 1 it. 4 (given effect by s. 38) had not come into operation. It reads as follows:

38. Consequential Amendments

The Acts referred to in the Schedule are amended as set out in Schedule 1.

Schedule 1 item 4 reads as follows:

Schedule 1 — Consequential amendments to other Acts

4. *Freedom of Information Act 1992*

Provision amended	Amendment
Schedule 2	Delete the item “The State Government Insurance Corporation.”.

⁹ On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

75. Various provisions repealed

The provisions listed in the Table to this section are repealed.

Table of provisions repealed

Act	Provision
.....
<i>Freedom of Information Act 1992</i>	s. 62(2)
.....

¹⁰ On the date as at which this compilation was prepared, the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 33 had not come into operation. It reads as follows:

33. Freedom of Information Act 1992 amended

- (1) This section amends the *Freedom of Information Act 1992*.
- (2) In Schedule 2 after “The Corruption and Crime Commission.” insert:

The Public Sector Commissioner, but only in relation to documents originating with or received by the Public Sector Commissioner in relation to his or her functions under the *Corruption, Crime and Misconduct Act 2003*.

¹¹ On the date as at which this compilation was prepared, the *Declared Places (Mentally Impaired Accused) Act 2015* s. 86 had not come into operation. It reads as follows:

86. Freedom of Information Act 1992 amended

- (1) This section amends the *Freedom of Information Act 1992*.
- (2) In section 63(3)(aa) delete “1999 or” and insert:

1999, the Declared Places (Mentally Impaired Accused) Act 2015
or

- (3) In the Glossary clause 1 in the definitions of **contractor** and **subcontractor** delete “1999 or” and insert:

1999, the Declared Places (Mentally Impaired Accused)
Act 2015 or

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
access applicant.....	Gl.
access regulation functions	Gl.
agency	99(3), Gl.
applicant.....	Gl.
applicant for amendment.....	Gl.
arbitrator	Gl.
Authority.....	Gl.
Board	Gl.
Commonwealth intelligence or security agency	Sch. 1 cl. 5(5)
confidential information.....	82(1)
contractor	Gl.
contravention	Sch. 1 cl. 5(5)
Corrective Services	Gl.
court	Gl.
document.....	Gl.
edited copy.....	Gl.
Executive body	Sch. 1 cl. 1(6)
exempt agency	Gl.
exempt document.....	Gl.
exempt matter	Gl.
exemption certificate.....	Gl.
Gold Corporation	Sch. 1 cl. 15(2)
information statement	94
internal manual	95
law	Sch. 1 cl. 5(5)
misbehaviour.....	58(2)
officer.....	Gl.
other government	Sch. 1 cl. 2(3)
permitted period.....	13(3)
person.....	45(1)
personal information	Gl.
principal officer.....	Gl.
public body or office.....	Gl.
record	Gl.
relative	Gl.
relevant office	62(1)
requested documents.....	Gl.
review proceedings	88
State archive.....	Gl.

Defined terms

subcontractor.....	Gl.
the agency	Gl.
third party.....	32(1), 33(1), Gl.