

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (24/03/2009)

If you have any comments on this exposure draft, they should be sent by 15 May 2009 to the following email address: foiconsultation@pmc.gov.au or to:

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Freedom of Information Amendment (Reform) Bill 2009

No. , 2009

(Cabinet Secretary)

EXPOSURE DRAFT

A Bill for an Act to amend the law relating to access to information, and for related purposes

EXPOSURE DRAFT

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1 **A Bill for an Act to amend the law relating to access**
2 **to information, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Freedom of Information Amendment*
6 *(Reform) Act 2009*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
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2. Schedule 1	At the same time as the <i>Information Commissioner Act 2009</i> commences. However, if the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all.	
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3. Schedule 2	On the day after the end of the period of 6 months beginning on the day on which the <i>Information Commissioner Act 2009</i> commences.	
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4. Schedules 3 to 6	At the same time as the <i>Information Commissioner Act 2009</i> commences. However, if the <i>Information Commissioner Act 2009</i> does not commence, the provision(s) do not commence at all.	
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1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

3 Schedule(s)

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1
2
3
Schedule 1—Objects

4
Freedom of Information Act 1982

5
6
1 Section 3

Repeal the section, substitute:

7
3 Objects—general

- 8 (1) The objects of this Act are to give the Australian community
9 access to information held by the Government of the
10 Commonwealth, by:
11 (a) requiring agencies to publish the information; and
12 (b) providing for a right of access to documents.
- 13 (2) The Parliament intends, by these objects, to promote Australia's
14 representative democracy by contributing towards the following:
15 (a) increasing public participation in Government processes,
16 with a view to promoting better-informed decision-making;
17 (b) increasing scrutiny, discussion, comment and review of the
18 Government's activities.
- 19 (3) The Parliament also intends, by these objects, to increase
20 recognition that information held by the Government is to be
21 managed for public purposes, and is a national resource.
- 22 (4) The Parliament also intends that functions and powers given by
23 this Act are to be performed and exercised, as far as possible, to
24 facilitate and promote public access to information, promptly and
25 at the lowest reasonable cost.

26
3A Objects—information or documents otherwise accessible

27
Scope

- 28 (1) This section applies if a Minister, or an officer of an agency, has
29 the power to publish, or give access to, information or a document
30 (including an exempt document) apart from under this Act.

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Schedule 1 Objects

1 *Publication and access powers not limited*

2 (2) The Parliament does not intend, by this Act, to limit that power, or
3 to prevent or discourage the exercise of that power:

4 (a) in the case of the power to publish the information or
5 document—despite any restriction on the publication of the
6 information or document under this Act; and

7 (b) in the case of the power to give access to the information or
8 document—whether or not access to the information or
9 document has been requested under section 15.

10 **2 Section 14**

11 Repeal the section.
12

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Publication of information **Schedule 2**

1
2
3
Schedule 2—Publication of information

4
Freedom of Information Act 1982

5
1 Subsection 4(1)

6 Insert:

7 *operational information* has the meaning given by section 8A.

8
2 Subsection 4(9)

9 Omit “of this Act (other than sections 8 and 93)”.

10
3 Part II

11 Repeal the Part, substitute:

12
Part II—Information publication scheme

13
Division 1—Guide to this Part

14
7A Information publication scheme—guide

15 This Part establishes an information publication scheme for
16 agencies.

17 Each agency must publish a plan showing how it proposes to
18 implement this Part.

19 An agency must publish a range of information including
20 information about what the agency does and the way it does it, as
21 well as information dealt with or used in the course of its
22 operations, some of which is called operational information.

23 In addition, an agency may publish other information held by the
24 agency.

25 Information published by an agency must be kept accurate,
26 up-to-date and complete.

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Schedule 2 Publication of information

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An agency is not required to publish exempt matter. An agency is also not required to publish information if prohibited by another enactment.

The information (or details of how to access the information) must be published on a website. If there is a charge for accessing the information, the agency must publish details of the charge.

An agency must, in conjunction with the Information Commissioner, review the operation of the scheme in the agency every 5 years (if not earlier).

An agency must have regard to the objects of this Act, and guidelines issued by the Information Commissioner, in doing anything for the purposes of this Part.

If operational information is not published in accordance with this Part, a person must not be subjected to any prejudice as a result of not having access to the information.

16

Division 2—Information to be published

17

8 Information to be published—what information?

18

Agency plans

19

(1) An agency must prepare a plan showing the following:

20

(a) what information the agency proposes to publish for the purposes of this Part;

21

22

(b) how, and to whom, the agency proposes to publish information for the purposes of this Part;

23

24

(c) how the agency otherwise proposes to comply with this Part.

25

Information that must be published

26

(2) The agency must publish the following information:

27

(a) the plan prepared under subsection (1);

28

(b) details of the structure of the agency's organisation (for example, in the form of an organisation chart);

29

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Publication of information **Schedule 2**

- 1 (c) details of the functions of the agency, including its
2 decision-making powers and other powers affecting members
3 of the public (or any particular person or entity, or class of
4 persons or entities);
- 5 (d) details of appointments of officers of the agency that are
6 made under Acts (other than APS employees within the
7 meaning of the *Public Service Act 1999*);
- 8 (e) the information in annual reports prepared by the agency that
9 are laid before the Parliament;
- 10 (f) details of arrangements for members of the public to
11 comment on specific policy proposals for which the agency is
12 responsible, including how (and to whom) those comments
13 may be made;
- 14 (g) the information in documents to which the agency routinely
15 gives access in response to requests under Part III (access to
16 documents);
- 17 (h) the information held by the agency that is routinely provided
18 to the Parliament in response to requests and orders from the
19 Parliament;
- 20 (i) contact details for an officer (or officers) who can be
21 contacted about access to the agency's information or
22 documents under this Act;
- 23 (j) the agency's operational information (see section 8A).

24 Note: If operational information is not published in accordance with this
25 section, a person must not be subjected to any prejudice as a result
26 (see section 10).

27 *Other information*

- 28 (3) The agency may publish other information held by the agency.

29 *Functions and powers*

- 30 (4) This section applies to a function or power of an agency whether or
31 not the agency has the function or power under an enactment.

32 Note 1: See section 8C for restrictions on the requirement to publish this
33 information.

34 Note 2: The agency must have regard to the objects of this Act and guidelines
35 issued by the Information Commissioner in performing functions, and
36 exercising powers, under this section (see section 9A).

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Schedule 2 Publication of information

1 **8A Information to be published—what is *operational information*?**

- 2 (1) An agency's *operational information* is information held by the
3 agency to assist the agency to perform or exercise the agency's
4 functions or powers in making decisions or recommendations
5 affecting members of the public (or any particular person or entity,
6 or class of persons or entities).

7 Example: The agency's rules, guidelines, practices and precedents relating to
8 those decisions and recommendations.

- 9 (2) An agency's *operational information* does not include information
10 that is available to members of the public otherwise than by being
11 published by (or on behalf of) the agency.

12 **8B Information to be published—accuracy etc.**

13 An agency must ensure that information published by the agency
14 as required or permitted by this Part is accurate, up-to-date and
15 complete.

16 **8C Information to be published—restrictions**

17 *Exempt documents*

- 18 (1) An agency is not required under this Part to publish exempt matter.

19 *Publication prohibited or restricted by other legislation*

- 20 (2) If an enactment restricts or prohibits the publication of particular
21 information, an agency is not required under this Part to publish the
22 information otherwise than as permitted or required by the
23 enactment.

24 *Operation of restrictions*

- 25 (3) This section applies despite section 8.

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Publication of information **Schedule 2**

1 **8D Information to be published—how (and to whom) information is**
2 **to be published**

3 *Scope*

- 4 (1) An agency must publish information that is required or permitted
5 to be published under this Part in accordance with this section.

6 *How (and to whom) information is to be published*

- 7 (2) The agency must publish the information:
8 (a) to members of the public generally; and
9 (b) if the agency considers that it is appropriate to do so—to
10 particular classes of persons or entities.
- 11 (3) The agency must publish the information on a website by:
12 (a) making the information available for downloading from the
13 website; or
14 (b) publishing on the website a link to another website, from
15 which the information can be downloaded; or
16 (c) publishing on the website other details of how the
17 information may be obtained.
- 18 (4) If there is a charge for accessing the information, the agency must
19 publish details of the charge in the same way as the information is
20 published under this section.

21 Note 1: The agency must have regard to the objects of this Act and guidelines
22 issued by the Information Commissioner in performing functions, and
23 exercising powers, under this section (see section 9A).

24 Note 2: After access is given to a document under Part III (access to
25 documents) in accordance with a request, the agency must publish the
26 accessed document to members of the public generally in the same
27 way as described in this section (see section 11C).

28 **8E Information to be published—Information Commissioner to**
29 **assist agencies**

30 The Information Commissioner may provide appropriate assistance
31 to an agency in:

- 32 (a) identifying and preparing information which is required or
33 permitted to be published under this Part; and

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Schedule 2 Publication of information

- 1 (b) determining how (and to whom) the information is required
2 or permitted to be published under section 8D.

3 **Division 3—Review of information publication scheme**

4 **8F Review of scheme—Information Commissioner functions**

5 The Information Commissioner has the following functions (as
6 conferred by this Act and the *Information Commissioner Act 2009*,
7 but without limiting any provision of either Act):

- 8 (a) reviewing the operation in each agency of the information
9 publication scheme established by this Part, in conjunction
10 with the agency;
- 11 (b) investigating an agency's compliance with this Part under
12 Division 2 of Part VIIB (Information Commissioner
13 investigations);
- 14 (c) otherwise monitoring, investigating and reporting on the
15 operation of the scheme.

16 **9 Review of scheme—by agencies**

- 17 (1) An agency must, in conjunction with the Information
18 Commissioner, complete a review of the operation, in the agency,
19 of the information publication scheme established by this Part:
- 20 (a) as appropriate from time to time; and
21 (b) in any case—within 5 years after the last time a review under
22 this section was completed.
- 23 (2) The first review under subsection (1) must be completed within 5
24 years after the day this section commences.

25 Note 1: This section commences on the day after the end of the period of 6
26 months beginning on the day on which the *Information Commissioner*
27 *Act 2009* commences.

28 Note 2: The agency must have regard to the objects of this Act and guidelines
29 issued by the Information Commissioner in performing functions, and
30 exercising powers, under this section (see section 9A).

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Publication of information **Schedule 2**

1 **Division 4—Guidelines**

2 **9A Guidelines—functions and powers under this Part**

3 In performing a function, or exercising a power, under this Part, an
4 agency must have regard to:

- 5 (a) the objects of this Act (including all the matters set out in
6 sections 3 and 3A); and
7 (b) guidelines issued by the Information Commissioner for the
8 purposes of this paragraph under section 93A.

9 **Division 5—Miscellaneous**

10 **10 Miscellaneous—unpublished operational information**

11 *Scope*

- 12 (1) This section applies if:
- 13 (a) part (or all) of an agency's operational information (the
14 ***unpublished information***), in relation to a function or power
15 of the agency, is not published by the agency in accordance
16 with this Part; and
17 (b) a person engages in conduct relevant to the performance of
18 the function or the exercise of the power; and
19 (c) at the time of engaging in that conduct:
20 (i) the person was not aware of the unpublished
21 information; and
22 (ii) the agency had been in existence for more than 12
23 months.

24 Note: An agency's operational information is required to be published by the
25 agency (see sections 8 and 8A).

26 *No prejudice from lack of awareness of unpublished information*

- 27 (2) The person must not be subjected to any prejudice only because of
28 the application to that conduct of any rule, guideline or practice in
29 the unpublished information, if the person could lawfully have
30 avoided that prejudice had he or she been aware of the unpublished
31 information.

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Schedule 2 Publication of information

1 **10A Miscellaneous—who performs functions etc. given to agencies**

- 2 (1) A function or power given to an agency under this Part may be
3 performed or exercised, on behalf of the agency, by:
- 4 (a) the principal officer of the agency; or
5 (b) an officer of the agency acting within the scope of his or her
6 authority in accordance with arrangements approved by the
7 principal officer of the agency.
- 8 (2) The performance or exercise of a function or power under
9 paragraph (1)(b) is subject to the regulations.

10 **4 Subsection 42(2)**

11 Repeal the subsection, substitute:

- 12 (2) A document is not an exempt document because of subsection (1)
13 only because it contains operational information of an agency (see
14 section 8A).

15 **5 Saving—unpublished information**

16 Section 10 of the *Freedom of Information Act 1982*, as in force
17 immediately before the commencement of item 3 (the ***commencement***
18 ***time***), continues in force at and after the commencement time in relation
19 to:

- 20 (a) a document relating to a function of an agency, required to be
21 made available in accordance with section 9 of that Act
22 before the commencement time; and
23 (b) conduct engaged in by a person before the commencement
24 time that is relevant to the performance of that function.

25 Note: Item 3 commences on the day after the end of the period of 6 months
26 beginning on the day on which the *Information Commissioner Act*
27 2009 commences.
28

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Exemptions **Schedule 3**
Open access period amendments **Part 1**

Schedule 3—Exemptions

Part 1—Open access period amendments

Archives Act 1983

1 Subsection 3(1)

Insert:

open access period, in relation to a record, has the meaning given by the following provisions:

- (a) for a Cabinet notebook—section 22A;
- (b) for a record containing Census information—section 22B;
- (c) for any other record—subsection (7) of this section.

2 Subsection 3(7)

Repeal the subsection (including the note), substitute:

- (7) For the purposes of this Act, subject to sections 22A and 22B, work out when a record is in the *open access period* in accordance with the following table:

Open access period for records

Item	If the record came into existence in any of the following years (ending on 31 December) ...	the record is in the open access period on and after the following day ...
------	---	--

1	a year (the <i>creation year</i>) before 1980	1 January in the year that is 31 years after the creation year.
---	--	---

Example: A record that came into existence in the year 1979 is in the open access period on and after 1 January 2010.

2	1980 or 1981	1 January 2011.
---	--------------	-----------------

3	1982 or 1983	1 January 2012.
---	--------------	-----------------

4	1984 or 1985	1 January 2013.
---	--------------	-----------------

5	1986 or 1987	1 January 2014.
---	--------------	-----------------

6	1988 or 1989	1 January 2015.
---	--------------	-----------------

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Schedule 3 Exemptions

Part 1 Open access period amendments

Open access period for records

Item	If the record came into existence in any of the following years (ending on 31 December) ...	the record is in the open access period on and after the following day ...
7	1990 or 1991	1 January 2016.
8	1992 or 1993	1 January 2017.
9	1994 or 1995	1 January 2018.
10	1996 or 1997	1 January 2019.
11	1998 or 1999	1 January 2020.
12	2000	1 January 2021.
13	a later year (the <i>creation year</i>)	1 January in the year that is 21 years after the creation year. Example: A record that came into existence in the year 2001 is in the open access period on and after 1 January 2022.

Note: Cabinet notebooks and records containing Census information have different open access periods (see sections 22A and 22B).

3 Subsection 22A(1)

Repeal the subsection, substitute:

- (1) For the purposes of this Act, work out when a Cabinet notebook is in the *open access period* in accordance with the following table:

Open access period for Cabinet notebooks

Item	If the Cabinet notebook came into existence in any of the following years (ending on 31 December) ...	the Cabinet notebook is in the open access period on and after the following day ...
1	a year (the <i>creation year</i>) before 1960	1 January in the year that is 51 years after the creation year. Example: A Cabinet notebook that came into existence in the year 1959 is in the open access period on and after 1 January 2010.
2	1960, 1961 or 1962	1 January 2011.

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Schedule 3 Exemptions

Part 2 Main exemption amendments

1

2 **Part 2—Main exemption amendments**

3 *Freedom of Information Act 1982*

4 **5 Subsection 4(1)**

5 Insert:

6 *Cabinet* includes a committee of the Cabinet.

7 **6 Subsection 4(1) (definition of *Cabinet notebook*)**

8 Omit “or of a committee of the Cabinet, being notes”, substitute “, if the
9 notes were”.

10 **7 Subsection 4(1)**

11 Insert:

12 *conditionally exempt*: a document is *conditionally exempt* if
13 Division 3 of Part IV (public interest conditional exemptions)
14 applies to the document.

15 Note: Access must generally be given to a conditionally exempt document
16 unless it would be contrary to the public interest (see section 11A).

17 **8 Subsection 4(1) (definition of *edited copy*)**

18 Repeal the definition, substitute:

19 *edited copy* has the meaning given by section 22 (access to edited
20 copies with exempt matter deleted).

21 **9 Subsection 4(1) (paragraph (a) of the definition of *exempt* 22 *document*)**

23 Repeal the paragraph, substitute:

24 (a) a document that is exempt for the purposes of Part IV
25 (exempt documents) (see section 31B); or

26 **10 Subsection 4(1)**

27 Insert:

28 *run out*: all of a person’s opportunities for review under this Act in
29 relation to an access grant decision have *run out* when:

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- 1 (a) the latest time for applying for an internal review or an IC
2 review in relation to the decision has ended, if the person has
3 not applied for either review; or
4 (b) if the person has applied for an internal review in relation to
5 the decision:
6 (i) the internal review is concluded; and
7 (ii) the time for applying for an IC review of the decision on
8 internal review has ended, if the person has not applied
9 for the IC review; or
10 (c) if the person has applied for an IC review in relation to the
11 decision:
12 (i) proceedings in relation to the IC review (including any
13 proceedings in a court) are concluded; and
14 (ii) the time for applying to the Tribunal for a review in
15 relation to the decision has ended, if the person has not
16 applied for such a review; or
17 (d) if the person has applied to the Tribunal for a review in
18 relation to the decision—proceedings in relation to the
19 review (including any proceedings in a court) are concluded.
20 Note: The time for applying for a review of a decision may be extended in
21 certain circumstances (see sections 54B and 54T).

22 **11 At the end of section 4**

23 Add:

- 24 (10) To avoid doubt, information or matter communicated in the way
25 mentioned in paragraph 33(b) includes information or matter so
26 communicated pursuant to any treaty or formal instrument on the
27 reciprocal protection of classified information between the
28 Government of the Commonwealth, or an authority of the
29 Commonwealth, and:
30 (a) a foreign government or an authority of a foreign
31 government; or
32 (b) an international organisation.

33 Note: Section 33 deals with documents affecting national security, defence
34 or international relations.

35 **12 After section 11**

36 Insert:

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Schedule 3 Exemptions

Part 2 Main exemption amendments

1 **11A Access to documents on request**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) a request is made by a person, in accordance with subsection
- 5 15(2), to an agency or Minister for access to:
- 6 (i) a document of the agency; or
- 7 (ii) an official document of the Minister; and
- 8 (b) any charge that, under the regulations, is required to be paid
- 9 before access is given has been paid.

- 10 (2) This section applies subject to this Act.

11 Note: Other provisions of this Act are relevant to decisions about access to

12 documents, for example the following:

- 13 (a) section 12 (documents otherwise available);
- 14 (b) section 13 (documents in national institutions);
- 15 (c) section 15A (personnel records);
- 16 (d) section 22 (access to edited copies with exempt matter deleted).

17 *Mandatory access—general rule*

- 18 (3) The agency or Minister must give the person access to the
- 19 document in accordance with this Act, subject to this section.

20 *Exemptions and conditional exemptions*

- 21 (4) The agency or Minister is not required by this Act to give the
- 22 person access to the document at a particular time if, at that time,
- 23 the document is an exempt document.

24 Note 1: If a document is conditionally exempt (under Division 3 of Part IV

25 (public interest conditional exemptions)), it is an exempt document

26 only if subsection (5) does not apply to the document, subject to

27 subsection (6) (see section 31B).

28 Note 2: Access may be given to an exempt document apart from under this

29 Act, whether or not in response to a request (see section 3A (objects—

30 information or documents otherwise accessible)).

- 31 (5) The agency or Minister must give the person access to the
- 32 document if it is conditionally exempt at a particular time unless
- 33 (in the circumstances) access to the document at that time would,
- 34 on balance, be contrary to the public interest.

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1 Note 1: Division 3 of Part IV provides for when a document is conditionally
2 exempt.

3 Note 2: Section 11B deals with when it is contrary to the public interest to
4 give a person access to the document.

5 (6) To avoid doubt, a conditionally exempt document is an exempt
6 document unless subsection (5) applies to the document (see
7 section 31B).

8 (7) Despite subsection (5), the agency or Minister is not required to
9 give access to the document at a particular time if, at that time, the
10 document is both:

11 (a) a conditionally exempt document; and

12 (b) an exempt document:

13 (i) under Division 2 of Part IV (exemptions); or

14 (ii) within the meaning of paragraph (b) or (c) of the
15 definition of *exempt document* in subsection 4(1).

16 **11B Public interest exemptions—factors**

17 *Scope*

18 (1) This section applies for the purposes of working out whether
19 access to a conditionally exempt document would, on balance, be
20 contrary to the public interest under subsection 11A(5).

21 (2) This section does not limit subsection 11A(5).

22 *Factors favouring access*

23 (3) Factors favouring access to the document in the public interest
24 include whether giving access to the document would do any of the
25 following:

26 (a) promote the objects of this Act (including all the matters set
27 out in sections 3 and 3A);

28 (b) inform debate on a matter of public importance;

29 (c) promote effective oversight of public expenditure;

30 (d) allow a person to access his or her own personal information.

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Schedule 3 Exemptions

Part 2 Main exemption amendments

1

Irrelevant factors

2

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

3

4

5

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

6

7

8

- (b) access to the document could result in the applicant misinterpreting or misunderstanding the document;

9

10

11

12

- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

13

14

- (d) access to the document could result in confusion or unnecessary debate.

15

Guidelines

16

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

17

18

19

20

11C Publication of information in accessed documents

21

Scope

22

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:

23

24

25

- (a) personal information related to that person;

26

27

28

29

- (b) personal information related to a member of that person's family (within the meaning of subsection 6(10) of the *Privacy Act 1988*, as it affects the provisions mentioned in that subsection);

30

31

- (c) information about the business, commercial, financial or professional affairs of the person.

32

33

[Drafting note: Subsection 6(10) of the Privacy Act 1988 will be inserted into that Act, with effect from 1 July 2009, by the Same-Sex

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Exemptions **Schedule 3**
Main exemption amendments **Part 2**

1 *Relationships (Equal Treatment in Commonwealth Laws—General*
2 *Law Reform) Act 2008, Schedule 13, item 1.]*

3 *Publication*

- 4 (2) The agency, or the Minister, must publish the information to
5 members of the public generally on a website by:
6 (a) making the information available for downloading from the
7 website; or
8 (b) publishing on the website a link to another website, from
9 which the information can be downloaded; or
10 (c) publishing on the website other details of how the
11 information may be obtained.
- 12 (3) If there is a charge for accessing the information, the agency or
13 Minister must publish details of the charge in the same way as the
14 information is published under this section.

15 *Time limit for publication*

- 16 (4) The agency or Minister must comply with this section within 10
17 working days after the day the person is given access to the
18 document.
- 19 (5) In this section:
20 *working day* means a day that is not:
21 (a) a Saturday; or
22 (b) a Sunday; or
23 (c) a public holiday in the place where the function of publishing
24 the information under this section is to be performed.

25 **13 Section 18**

26 Repeal the section.

27 **14 Section 22**

28 Repeal the section, substitute:

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Part 2 Main exemption amendments

1 **22 Access to edited copies with exempt matter deleted**

2 *Scope*

3 (1) This section applies if:

4 (a) an agency or Minister decides:

5 (i) to refuse to give access to an exempt document; or

6 (ii) that to give access to a document would disclose
7 information that would reasonably be regarded as
8 irrelevant to the request for access; and

9 (b) it is possible for the agency or Minister to prepare a copy (an
10 *edited copy*) of the document, modified by deletions,
11 ensuring that:

12 (i) access to the edited copy would be required to be given
13 under section 11A (access to documents on request);
14 and

15 (ii) the edited copy would not disclose any information that
16 would reasonably be regarded as irrelevant to the
17 request; and

18 (c) it is reasonably practicable for the agency or Minister to
19 prepare the edited copy, having regard to:

20 (i) the nature and extent of the modification; and

21 (ii) the resources available to modify the document; and

22 (d) it is not apparent (from the request or from consultation with
23 the applicant) that the applicant would decline access to the
24 edited copy.

25 *Access to edited copy*

26 (2) The agency or Minister must:

27 (a) prepare the edited copy as mentioned in paragraph (1)(b); and

28 (b) give the applicant access to the edited copy.

29 *Notice to applicant*

30 (3) The agency or Minister must give the applicant notice in writing:

31 (a) that the edited copy has been prepared; and

32 (b) of the grounds for the deletions; and

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- 1 (c) if any matter deleted is exempt matter—that the matter
2 deleted is exempt matter because of a specified provision of
3 this Act; and
4 (d) in the case of a decision to refuse to give access to an exempt
5 document that is conditionally exempt—the reasons for the
6 decision, including the public interest factors taken into
7 account in making the decision.

8 Note: Access must generally be given to a conditionally exempt
9 document unless it would be contrary to the public interest (see
10 section 11A).

- 11 (4) Section 26 (reasons for decision) does not apply to the decision to
12 refuse access to the whole document unless the applicant requests
13 the agency or Minister to give the applicant a notice in writing in
14 accordance with that section.

15 **15 Subsections 25(1) and (2)**

16 Omit “or 33A” (wherever occurring).

17 **16 At the end of paragraph 26(1)(a)**

18 Add “and”.

19 **17 After paragraph 26(1)(a)**

20 Insert:

- 21 (aa) in the case of a decision to refuse to give access to an exempt
22 document that is conditionally exempt—include in those
23 reasons the public interest factors taken into account in
24 making the decision; and

25 Note: Access must generally be given to a conditionally exempt
26 document unless it would be contrary to the public interest (see
27 section 11A).

28 **18 Sections 26A, 27, 27A and 28**

29 Repeal the sections, substitute:

30 **26A Consultation—documents affecting Commonwealth-State** 31 **relations**

32 *Scope*

- 33 (1) This section applies if:
-

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Part 2 Main exemption amendments

- 1 (a) arrangements have been entered into between the
2 Commonwealth and a State about consultation under this
3 section; and
4 (b) a request is made to an agency or Minister for access to a
5 document that:
6 (i) originated with, or was received from, the State or an
7 authority of the State; or
8 (ii) contains information (*State-originated information*)
9 that originated with, or was received from, the State or
10 an authority of the State; and
11 (c) it appears to the agency or Minister that the State may
12 reasonably wish to contend that:
13 (i) the document is conditionally exempt under section 47B
14 (Commonwealth-State relations); and
15 (ii) subsection 11A(5) does not apply to the document.

16 Note: Access must generally be given to a conditionally exempt
17 document unless it would be contrary to the public interest (see
18 section 11A).

19 *Consultation required*

- 20 (2) The agency or Minister must not decide to give the applicant
21 access to the document unless consultation has taken place
22 between the Commonwealth and the State in accordance with the
23 arrangements.

24 *Decision to give access*

- 25 (3) If, after such consultation has taken place, the agency or Minister
26 decides to give the applicant access to the document, the agency or
27 Minister must give written notice of the decision to both of the
28 following:
29 (a) the State;
30 (b) the applicant.

31 *Access not to be given until review opportunities have run out*

- 32 (4) However, the agency or Minister must not give the applicant
33 access to the document unless, after all the opportunities of the
34 State for review under this Act in relation to the decision to give
35 access to the document have run out, the decision still stands, or is
36 confirmed.

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- 1 Note 1: The decision to give access to the document is subject to internal
2 review (see Part VI), review by the Information Commissioner (see
3 Part VII) and review by the Tribunal (see Part VIIA).
- 4 Note 2: For when all opportunities for review under this Act in relation to the
5 decision to give access to the document have *run out*, see subsection
6 4(1).

7 *Edited copies and State-originated information*

- 8 (5) This section applies:
9 (a) in relation to an edited copy of a document—in the same way
10 as it applies to the document; and
11 (b) in relation to a document containing State-originated
12 information—to the extent to which the document contains
13 such information.

14 **27 Consultation—business documents**

15 *Scope*

- 16 (1) This section applies if:
17 (a) a request is made to an agency or Minister for access to a
18 document containing information (*business information*)
19 covered by subsection (2) in respect of a person, organisation
20 or undertaking; and
21 (b) it appears to the agency or Minister that the person,
22 organisation or proprietor of the undertaking (the *person or*
23 *organisation concerned*) might reasonably wish to make a
24 contention (the *exemption contention*) that:
25 (i) the document is conditionally exempt under
26 section 47G; and
27 (ii) subsection 11A(5) does not apply to the document.

28 Note: Access must generally be given to a conditionally exempt
29 document unless it would be contrary to the public interest (see
30 section 11A).

- 31 (2) This subsection covers the following information:
32 (a) in relation to a person—information about the person's
33 business or professional affairs;
34 (b) in relation to an organisation or undertaking—information
35 about the business, commercial or financial affairs of the
36 organisation or undertaking.

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- 1 (3) In determining, for the purposes of paragraph (1)(b), whether the
2 person or organisation concerned might reasonably wish to make
3 an exemption contention because of business information in a
4 document, the agency or Minister must have regard to the
5 following matters:
6 (a) the extent to which the information is well known;
7 (b) whether the person, organisation or undertaking is known to
8 be associated with the matters dealt with in the information;
9 (c) the availability of the information from publicly accessible
10 sources;
11 (d) any other matters that the agency or Minister considers
12 relevant.

13 *Opportunity to make submissions*

- 14 (4) The agency or Minister must not decide to give access to the
15 document unless:
16 (a) the person or organisation concerned is given a reasonable
17 opportunity to make submissions in support of the exemption
18 contention; and
19 (b) the agency or the Minister has regard to any submissions so
20 made.
21 (5) However, subsection (4) only applies if it is reasonably practicable
22 for the agency or Minister to give the person or organisation
23 concerned a reasonable opportunity to make submissions in
24 support of the exemption contention, having regard to all the
25 circumstances (including the application of subsections 15(5) and
26 (6) (time limits for processing requests)).

27 *Decision to give access*

- 28 (6) If the agency or Minister decides to give the applicant access to the
29 document, the agency or Minister must give written notice of the
30 decision to both of the following:
31 (a) the person or organisation concerned;
32 (b) the applicant.

33 *Access not to be given until review opportunities have run out*

- 34 (7) However, the agency or Minister must not give the applicant
35 access to the document unless, after all the opportunities of the

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1 person or organisation concerned for review under this Act in
2 relation to the decision to give access to the document have run
3 out, the decision to give access still stands, or is confirmed.

4 Note 1: The decision to give access to the document is subject to internal
5 review (see Part VI), review by the Information Commissioner (see
6 Part VII) and review by the Tribunal (see Part VIIA).

7 Note 2: For when all opportunities for review under this Act in relation to the
8 decision to give access to the document have **run out**, see subsection
9 4(1).

10 *Edited copies and business information*

11 (8) This section applies:

- 12 (a) in relation to an edited copy of a document—in the same way
13 as it applies to the document; and
14 (b) in relation to a document containing business information—
15 to the extent to which the document contains such
16 information.

17 **27A Consultation—documents affecting personal privacy**

18 *Scope*

19 (1) This section applies if:

- 20 (a) a request is made to an agency or Minister for access to a
21 document containing personal information about a person
22 (including a person who has died); and
23 (b) it appears to the agency or Minister that the person or the
24 person's legal personal representative (the **person**
25 **concerned**) might reasonably wish to make a contention (the
26 **exemption contention**) that:
27 (i) the document is conditionally exempt under
28 section 47F; and
29 (ii) subsection 11A(5) does not apply to the document.

30 Note: Access must generally be given to a conditionally exempt
31 document unless it would be contrary to the public interest (see
32 section 11A).

33 (2) In determining, for the purposes of paragraph (1)(b), whether the
34 person concerned might reasonably wish to make an exemption
35 contention because of personal information in a document, the
36 agency or Minister must have regard to the following matters:

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- 1 (a) the extent to which the information is well known;
2 (b) whether the person to whom the information relates is known
3 to be (or to have been) associated with the matters dealt with
4 in the information;
5 (c) the availability of the information from publicly accessible
6 sources;
7 (d) any other matters that the agency or Minister considers
8 relevant.

9 *Opportunity to make submissions*

- 10 (3) The agency or Minister must not decide to give the applicant
11 access to the document unless:
12 (a) the person concerned is given a reasonable opportunity to
13 make submissions in support of the exemption contention;
14 and
15 (b) the agency or the Minister has regard to any submissions so
16 made.
- 17 (4) However, subsection (3) only applies if it is reasonably practicable
18 for the agency or Minister to give the person concerned a
19 reasonable opportunity to make submissions in support of the
20 exemption contention, having regard to all the circumstances
21 (including the application of subsections 15(5) and (6) (time limits
22 for processing requests)).

23 *Decision to give access*

- 24 (5) If the agency or Minister decides to give the applicant access to the
25 document, the agency or Minister must give written notice of the
26 decision to both of the following:
27 (a) the person concerned;
28 (b) the applicant.

29 *Access not to be given until review opportunities have run out*

- 30 (6) However, the agency or Minister must not give the applicant
31 access to the document unless, after all the opportunities of the
32 person concerned for review under this Act in relation to the
33 decision to give access to the document have run out, the decision
34 to give access still stands, or is confirmed.

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- 1 Note 1: The decision to give access to the document is subject to internal
2 review (see Part VI), review by the Information Commissioner (see
3 Part VII) and review by the Tribunal (see Part VIIA).
- 4 Note 2: For when all opportunities for review under this Act in relation to the
5 decision to give access to the document have *run out*, see subsection
6 4(1).

7 *Edited copies and personal information*

- 8 (7) This section applies:
- 9 (a) in relation to an edited copy of a document—in the same way
10 as it applies to the document; and
- 11 (b) in relation to a document containing personal information—
12 to the extent to which the document contains such
13 information.

14 **19 Before section 32**

15 Insert:

16 **Division 1—Preliminary**

17 **31A Access to exempt and conditionally exempt documents**

18 The following table summarises how this Act applies to exempt
19 documents and documents that are conditionally exempt:
20

How this Act applies to exempt and conditionally exempt documents

Item	If ...	then ...	because of ...
1	a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of <i>exempt document</i> in subsection 4(1)	access to the document is not required to be given	subsection 11A(4).
2	a document is a conditionally exempt document under Division 3 (public interest conditional exemptions)	access to the document is required to be given, unless it would be contrary to the public interest	subsection 11A(5) (see also section 11B (public interest factors)).

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How this Act applies to exempt and conditionally exempt documents

Item	If ...	then ...	because of ...
3	a document is an exempt document as mentioned in item 1, and also a conditionally exempt document under Division 3	access to the document is not required to be given	subsections 11A(4) and (6), and section 32 (interpretation).
4	access to a document is refused because it contains exempt matter, and the exempt matter can be deleted	(a) an edited copy deleting the exempt matter must be prepared (if practicable); and (b) access to the edited copy must be given;	section 22.
5	a document is an exempt document because of any provision of this Act	access to the document may be given apart from under this Act	section 3A (objects—information or documents otherwise accessible).

31B Exempt documents for the purposes of this Part

A document is *exempt* for the purposes of this Part if:

- (a) it is an exempt document under Division 2; or
- (b) it is conditionally exempt under Division 3, and access is not required to be given to the document because subsection 11A(5) does not apply to the document.

Note 1: A document is an *exempt document* for the purposes of this Act (see subsection 4(1)) if:

- (a) it is exempt under this section; or
- (b) it is exempt because of section 7 (exemption of certain persons and bodies); or
- (c) it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

20 Section 32

After “exempt documents,” (wherever occurring), insert “, or are conditionally exempt”.

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1 **21 After section 32**

2 Insert:

3 **Division 2—Exemptions**

4 **22 At the end of section 33**

5 Add:

6 Note: See also subsection 4(10).

7 **23 Sections 33A to 36**

8 Repeal the sections, substitute:

9 **34 Cabinet documents**

10 *General rules*

- 11 (1) A document is an exempt document if:
- 12 (a) both of the following are satisfied:
- 13 (i) it has been submitted to the Cabinet for its
- 14 consideration, or is or was proposed by a Minister to be
- 15 so submitted;
- 16 (ii) it was brought into existence for the dominant purpose
- 17 of submission for consideration by the Cabinet; or
- 18 (b) it is an official record of the Cabinet; or
- 19 (c) it was brought into existence for the dominant purpose of
- 20 briefing a Minister on a document to which paragraph (a)
- 21 applies; or
- 22 (d) it is a draft of a document to which paragraph (a), (b) or (c)
- 23 applies.
- 24 (2) A document is an exempt document to the extent that it is a copy or
- 25 part of, or contains an extract from, a document to which
- 26 subsection (1) applies.
- 27 (3) A document is an exempt document to the extent that it contains
- 28 information the disclosure of which would reveal a Cabinet
- 29 deliberation or decision, unless the existence of the deliberation or
- 30 decision has been officially disclosed.

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Schedule 3 Exemptions

Part 2 Main exemption amendments

1

Exceptions

2

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

3

4

Note: However, the attachment itself may be an exempt document.

5

- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.

6

7

- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

8

9

10

- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and

11

12

- (b) the existence of the deliberation or decision has not been officially disclosed.

13

14

24 Sections 39, 40, 41, 43, 43A and 44

15

Repeal the sections.

16

25 Subsection 45(2)

17

Omit “any document to the disclosure of which paragraph 36(1)(a) applies or would apply, but for the operation of subsection 36(2), (5) or (6), being a document”, substitute “a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is”.

18

19

20

21

22

26 Subsection 45(2)

23

After “unless the disclosure”, insert “of the document”.

24

27 Section 47

25

Repeal the section.

26

28 At the end of Part IV

27

Add:

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Exemptions **Schedule 3**
Main exemption amendments **Part 2**

1 **Division 3—Public interest conditional exemptions**

2 **47B Public interest conditional exemptions—Commonwealth-State** 3 **relations**

4 *FOI Act, s 33A:*

5 A document is conditionally exempt if disclosure of the document
6 under this Act:

- 7 (a) would, or could reasonably be expected to, cause damage to
8 relations between the Commonwealth and a State; or
9 (b) would divulge information or matter communicated in
10 confidence by or on behalf of the Government of a State or
11 an authority of a State, to the Government of the
12 Commonwealth, to an authority of the Commonwealth or to a
13 person receiving the communication on behalf of the
14 Commonwealth or of an authority of the Commonwealth.

15 Note: Access must generally be given to a conditionally exempt document
16 unless it would be contrary to the public interest (see section 11A).

17 **47C Public interest conditional exemptions—deliberative processes**

18 *FOI Act, s 36:*

19 *General rule*

- 20 (1) A document is conditionally exempt if it includes matter
21 (*deliberative matter*) in the nature of, or relating to, opinion, advice
22 or recommendation obtained, prepared or recorded, or consultation
23 or deliberation that has taken place, in the course of, or for the
24 purposes of, the deliberative processes involved in the functions of
25 an agency or Minister or of the Government of the
26 Commonwealth.

27 *Exceptions*

- 28 (2) Deliberative matter does not include either of the following:
29 (a) operational information (see section 8A);
30 (b) purely factual material.

31 Note: An agency must publish its operational information (see section 8).

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Schedule 3 Exemptions

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- 1 (3) This section does not apply to any of the following:
- 2 (a) reports (including reports concerning the results of studies,
- 3 surveys or tests) of scientific or technical experts, whether
- 4 employed within an agency or not, including reports
- 5 expressing the opinions of such experts on scientific or
- 6 technical matters;
- 7 (b) reports of a body or organisation, prescribed by the
- 8 regulations, that is established within an agency;
- 9 (c) the record of, or a formal statement of the reasons for, a final
- 10 decision given in the exercise of a power or of an
- 11 adjudicative function.

12 Note: Access must generally be given to a conditionally exempt document
13 unless it would be contrary to the public interest (see section 11A).

14 **47D Public interest conditional exemptions—financial or property** 15 **interests of the Commonwealth**

16 *FOI Act, s 39:*

17 A document is conditionally exempt if its disclosure under this Act
18 would have a substantial adverse effect on the financial or property
19 interests of the Commonwealth or of an agency.

20 Note: Access must generally be given to a conditionally exempt document
21 unless it would be contrary to the public interest (see section 11A).

22 **47E Public interest conditional exemptions—certain operations of** 23 **agencies**

24 *FOI Act, s 40:*

25 A document is conditionally exempt if its disclosure under this Act
26 would, or could reasonably be expected to, do any of the
27 following:

- 28 (a) prejudice the effectiveness of procedures or methods for the
29 conduct of tests, examinations or audits by an agency;
- 30 (b) prejudice the attainment of the objects of particular tests,
31 examinations or audits conducted or to be conducted by an
32 agency;
- 33 (c) have a substantial adverse effect on the management or
34 assessment of personnel by the Commonwealth or by an
35 agency;

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1 (d) have a substantial adverse effect on the proper and efficient
2 conduct of the operations of an agency.

3 Note: Access must generally be given to a conditionally exempt document
4 unless it would be contrary to the public interest (see section 11A).

5 **47F Public interest conditional exemptions—personal privacy**

6 *FOI Act, s 41:*

7 *General rule*

8 (1) A document is conditionally exempt if its disclosure under this Act
9 would involve the unreasonable disclosure of personal information
10 about any person (including a deceased person).

11 (2) In determining whether the disclosure of the document would
12 involve the unreasonable disclosure of personal information, an
13 agency or Minister must have regard to the following matters:

14 (a) the extent to which the information is well known;

15 (b) whether the person to whom the information relates is known
16 to be (or to have been) associated with the matters dealt with
17 in the document;

18 (c) the availability of the information from publicly accessible
19 sources;

20 (d) any other matters that the agency or Minister considers
21 relevant.

22 (3) Subject to subsection (5), subsection (1) does not have effect in
23 relation to a request by a person for access to a document by reason
24 only of the inclusion in the document of matter relating to that
25 person.

26 *Access given to qualified person instead*

27 (4) Subsection (5) applies if:

28 (a) a request is made to an agency or Minister for access to a
29 document of the agency, or an official document of the
30 Minister, that contains information concerning the applicant,
31 being information that was provided by a qualified person
32 acting in his or her capacity as a qualified person; and

33 (b) it appears to the principal officer of the agency or to the
34 Minister (as the case may be) that the disclosure of the

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- 1 information to the applicant might be detrimental to the
2 applicant's physical or mental health, or well-being.
- 3 (5) The principal officer or Minister may, if access to the document
4 would otherwise be given to the applicant, direct that access to the
5 document, so far as it contains that information, is not to be given
6 to the applicant but is to be given instead to a qualified person
7 who:
- 8 (a) carries on the same occupation, of a kind mentioned in the
9 definition of *qualified person* in subsection (7), as the
10 first-mentioned qualified person; and
11 (b) is to be nominated by the applicant.
- 12 (6) The powers and functions of the principal officer of an agency
13 under this section may be exercised by an officer of the agency
14 acting within his or her scope of authority in accordance with
15 arrangements referred to in section 23.
- 16 (7) In this section:
- 17 *qualified person* means a person who carries on, and is entitled to
18 carry on, an occupation that involves the provision of care for the
19 physical or mental health of people or for their well-being, and,
20 without limiting the generality of the foregoing, includes any of the
21 following:
- 22 (a) a medical practitioner;
23 (b) a psychiatrist;
24 (c) a psychologist;
25 (d) a counsellor;
26 (e) a social worker.
- 27 Note: Access must generally be given to a conditionally exempt document
28 unless it would be contrary to the public interest (see section 11A).

29 **47G Public interest conditional exemptions—business**

30 *FOI Act, s 43:*

- 31 (1) A document is conditionally exempt if its disclosure under this Act
32 would disclose:
33 (a) trade secrets; or
-

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- 1 (b) any other information having a commercial value that would
2 be, or could reasonably be expected to be, destroyed or
3 diminished if the information were disclosed; or
4 (c) information (other than trade secrets or information to which
5 paragraph (b) applies) concerning a person in respect of his
6 or her business or professional affairs or concerning the
7 business, commercial or financial affairs of an organisation
8 or undertaking, in a case in which the disclosure of the
9 information:
10 (i) would, or could reasonably be expected to,
11 unreasonably affect that person adversely in respect of
12 his or her lawful business or professional affairs or that
13 organisation or undertaking in respect of its lawful
14 business, commercial or financial affairs; or
15 (ii) could reasonably be expected to prejudice the future
16 supply of information to the Commonwealth or an
17 agency for the purpose of the administration of a law of
18 the Commonwealth or of a Territory or the
19 administration of matters administered by an agency.
- 20 (2) Subsection (1) does not have effect in relation to a request by a
21 person for access to a document:
22 (a) by reason only of the inclusion in the document of
23 information concerning that person in respect of his or her
24 business or professional affairs; or
25 (b) by reason only of the inclusion in the document of
26 information concerning the business, commercial or financial
27 affairs of an undertaking where the person making the
28 request is the proprietor of the undertaking or a person acting
29 on behalf of the proprietor; or
30 (c) by reason only of the inclusion in the document of
31 information concerning the business, commercial or financial
32 affairs of an organisation where the person making the
33 request is the organisation or a person acting on behalf of the
34 organisation.
- 35 (3) A reference in this section to an undertaking includes a reference to
36 an undertaking that is carried on by, or by an authority of, the
37 Commonwealth or a State or by a local government authority.
- 38 (4) For the purposes of paragraph (1)(c), information is not taken to
39 concern a person in respect of the person's professional affairs
-

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1 merely because it is information concerning the person's status as a
2 member of a profession.

3 Note: Access must generally be given to a conditionally exempt document
4 unless it would be contrary to the public interest (see section 11A).

5 **47H Public interest conditional exemptions—research**

6 *FOI Act, s 43A:*

7 A document is conditionally exempt if:

- 8 (a) it contains information relating to research that is being, or is
9 to be, undertaken by an officer of an agency specified in
10 Schedule 4; and
11 (b) disclosure of the information before the completion of the
12 research would be likely unreasonably to expose the agency
13 or officer to disadvantage.

14 Note: Access must generally be given to a conditionally exempt document
15 unless it would be contrary to the public interest (see section 11A).

16 **47J Public interest conditional exemptions—the economy**

17 *FOI Act, s 44:*

18 (1) A document is conditionally exempt if its disclosure under this Act
19 would, or could be reasonably expected to, have a substantial
20 adverse effect on Australia's economy by:

- 21 (a) influencing a decision or action of a person or entity; or
22 (b) giving a person (or class of persons) an undue benefit or
23 detriment, in relation to business carried on by the person (or
24 class), by providing premature knowledge of proposed or
25 possible action or inaction of a person or entity.

26 Note: A person includes a body corporate and a body politic (see section 22
27 of the *Acts Interpretation Act 1901*). Examples of a body politic
28 include the government of the Commonwealth, a State, a Territory or
29 a foreign country.

30 (2) For the purposes of subsection (1), a substantial adverse effect on
31 Australia's economy includes a substantial adverse effect on:

- 32 (a) a particular sector of the economy; or
33 (b) the economy of a particular region of Australia.

EXPOSURE DRAFT

Exemptions **Schedule 3**
Main exemption amendments **Part 2**

- 1 (3) The documents to which subsection (1) applies include, but are not
2 limited to, documents containing matter relating to any of the
3 following:
4 (a) currency or exchange rates;
5 (b) interest rates;
6 (c) taxes, including duties of customs or of excise;
7 (d) the regulation or supervision of banking, insurance and other
8 financial institutions;
9 (e) proposals for expenditure;
10 (f) foreign investment in Australia;
11 (g) borrowings by the Commonwealth, a State or an authority of
12 the Commonwealth or of a State.

13 Note: Access must generally be given to a conditionally exempt document
14 unless it would be contrary to the public interest (see section 11A).

15 **29 Schedule 4**

16 Omit “Section 43A”, substitute “Section 47H”.
17

EXPOSURE DRAFT

Schedule 3 Exemptions

Part 3 Other exemption amendments

1

2 **Part 3—Other exemption amendments**

3 *Archives Act 1983*

4 **30 Paragraph 33(1)(b)**

5 Repeal the paragraph, substitute:

6 (b) information or matter:

- 7 (i) that was communicated in confidence by, or on behalf
8 of, a foreign government, an authority of a foreign
9 government or an international organisation (the *foreign*
10 *entity*) to the Government of the Commonwealth, to an
11 authority of the Commonwealth or to a person who
12 received the communication on behalf of the
13 Commonwealth or an authority of the Commonwealth
14 (the *Commonwealth entity*); and
15 (ii) which the foreign entity advises the Commonwealth
16 entity is still confidential; and
17 (iii) the confidentiality of which it would be reasonable to
18 maintain;

19 **31 Paragraph 50A(2)(b)**

20 Repeal the paragraph, substitute:

- 21 (b) whether it would be reasonable to maintain the
22 confidentiality of information or matter to which both of the
23 following apply by not making the record available for public
24 access:
25 (i) the information or matter was communicated in
26 confidence by, or on behalf of, a foreign government, an
27 authority of a foreign government or an international
28 organisation (the *foreign entity*) to the Government of
29 the Commonwealth, to an authority of the
30 Commonwealth or to a person who received the
31 communication on behalf of the Commonwealth or an
32 authority of the Commonwealth (the *Commonwealth*
33 *entity*);
34 (ii) the foreign entity advises the Commonwealth entity that
35 the information or matter is still confidential.

EXPOSURE DRAFT

Exemptions **Schedule 3**
Other exemption amendments **Part 3**

1 **32 Paragraph 50A(3)(b)**

2 Repeal the paragraph, substitute:

3 (b) whether it would be reasonable to maintain the
4 confidentiality of information or matter to which both of the
5 following apply by not making that part, or a copy of that
6 part, of the record available for public access:

7 (i) the information or matter was communicated in
8 confidence by, or on behalf of, a foreign government, an
9 authority of a foreign government or an international
10 organisation (the *foreign entity*) to the Government of
11 the Commonwealth, to an authority of the
12 Commonwealth or to a person who received the
13 communication on behalf of the Commonwealth or an
14 authority of the Commonwealth (the *Commonwealth*
15 *entity*);

16 (ii) the foreign entity advises the Commonwealth entity that
17 the information or matter is still confidential.

18 ***Privacy Act 1988***

19 **33 Subsection 34(1)**

20 Omit “or 33A,”.
21

EXPOSURE DRAFT

Schedule 3 Exemptions

Part 4 Application provisions

1

2 **Part 4—Application provisions**

3 **34 Application—Part 2**

4 The amendments made by Part 2 apply in relation to requests for access
5 made under section 15 of the *Freedom of Information Act 1982* on or
6 after the commencement of that Part.

7 **35 Application—items 30, 31 and 32**

8 The amendments made by items 30, 31 and 32 apply for the purposes of
9 determining whether access, or an extension of partial access, to a
10 record referred to in section 31 of the *Archives Act 1983* will be given in
11 accordance with an application made under section 40 of that Act and
12 received by the Archives on or after the commencement of those items.
13

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1
2 **Schedule 4—Information Commissioner**
3 **amendments**

4 **Part 1—Main amendments**

5 *Freedom of Information Act 1982*

6 **1 Subsection 4(1)**

7 Insert:

8 *access grant decision* has the meaning given by section 53B.

9 **2 Subsection 4(1)**

10 Insert:

11 *access refusal decision* has the meaning given by section 53A.

12 **3 Subsection 4(1)**

13 Insert:

14 *action*, if the action is taken by a person or agency, has the same
15 meaning as in the *Ombudsman Act 1976*.

16 Note: See subsections 3(2) to (7) of the *Ombudsman Act 1976*.

17 **4 Subsection 4(1)**

18 Insert:

19 *affected third party* has the meaning given by section 53C.

20 **5 Subsection 4(1)**

21 Insert:

22 *authorised person* has the meaning given by section 77.

23 **6 Subsection 4(1)**

24 Insert:

25 *complainant* has the meaning given by subsection 70(1).

26 **7 Subsection 4(1)**

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 Insert:

2 *engage in conduct* means:

3 (a) do an act; or

4 (b) omit to do an act.

5 **8 Subsection 4(1)**

6 Insert:

7 *IC review* has the meaning given by section 54G.

8 **9 Subsection 4(1)**

9 Insert:

10 *IC reviewable decision* has the meaning given by section 54K.

11 **10 Subsection 4(1)**

12 Insert:

13 *IC review applicant* has the meaning given by section 54J.

14 **11 Subsection 4(1)**

15 Insert:

16 *IC review application* has the meaning given by section 54H.

17 **12 Subsection 4(1)**

18 Insert:

19 *implementation notice* has the meaning given by section 89.

20 **13 Subsection 4(1)**

21 Insert:

22 *Information Commissioner* has the meaning given by the
23 *Information Commissioner Act 2009*.

24 **14 Subsection 4(1)**

25 Insert:

26 *internal review* has the meaning given by sections 54 and 54A.

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 **15 Subsection 4(1)**

2 Insert:

3 *internal review applicant* has the meaning given by section 54B.

4 **16 Subsection 4(1)**

5 Insert:

6 *investigation recommendations* has the meaning given by
7 section 88.

8 **17 Subsection 4(1)**

9 Insert:

10 *investigation results* has the meaning given by section 87.

11 **18 Subsection 4(1)**

12 Insert:

13 *respondent agency* has the meaning given by subsections 69(2)
14 and 70(2).

15 **19 Subsection 4(1)**

16 Insert:

17 *review parties* has the meaning given by section 55A.

18 **20 Subsection 4(1)**

19 Insert:

20 *vexatious applicant declaration* has the meaning given by
21 section 89K.

22 **21 Subsection 12(1)**

23 Omit "(1)".

24 **22 Subsections 12(2) to (4)**

25 Repeal the subsections.

26 **23 Before section 16**

27 Insert:

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 **15AB Decision not made on request—deemed refusal**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) a request has been made to an agency or Minister; and
- 5 (b) the period (the *initial decision period*) covered by
- 6 subsection (2) has ended since the day the request was
- 7 received by, or on behalf of, the agency or Minister; and
- 8 (c) notice of a decision on the request has not been received by
- 9 the applicant.
- 10 (2) The initial decision period covered by this subsection is the period
- 11 of 30 days mentioned in paragraph 15(5)(b), or that period as
- 12 extended under subsection 15(6) or (8) (consultation),
- 13 section 15AA (complex or voluminous requests) or section 31
- 14 (decision to impose charge).

15 *Deemed refusal*

- 16 (3) Subject to this section:
- 17 (a) the principal officer of the agency or the Minister is taken to
- 18 have made a decision personally refusing to give access to
- 19 the document on the last day of the initial decision period;
- 20 and
- 21 (b) notice of the decision is taken to have been given under
- 22 section 26 to the applicant on the same day.

23 *Agency or Minister may apply for further time*

- 24 (4) However, the agency or Minister concerned may apply, in writing,
- 25 to the Information Commissioner for further time to deal with the
- 26 request.
- 27 (5) The Information Commissioner may allow further time considered
- 28 appropriate by the Information Commissioner for the agency or
- 29 Minister to deal with the request.
- 30 (6) If the Information Commissioner allows further time, the
- 31 Information Commissioner may impose any condition that he or
- 32 she considers appropriate.

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 (7) Subsection (3) (deemed refusal) does not apply, and is taken never
2 to have applied, if the agency or Minister:

3 (a) makes a decision on the request within the further time
4 allowed; and

5 (b) complies with any condition imposed under subsection (6).

6 (8) However, subsection (3) (deemed refusal) applies as if the initial
7 decision period were extended by the time allowed by the
8 Information Commissioner under subsection (5) if the agency or
9 Minister:

10 (a) does not make a decision on the request within the further
11 time allowed; or

12 (b) does not comply with any condition imposed under
13 subsection (6).

14 *No further time allowed*

15 (9) If subsection (8) (deemed refusal after allowance of further time)
16 applies, the Information Commissioner does not have the power to
17 allow further time under this section in relation to the decision
18 taken to be made under subsection (3) in its operation as affected
19 by subsection (8).

20 **24 Subsection 21(3)**

21 Repeal the subsection.

22 **25 Subparagraph 26(1)(c)(ii)**

23 Omit “Ombudsman”, substitute “Information Commissioner”.

24 **26 Paragraph 26(1)(c)**

25 Omit “review under section 54”, substitute “internal review (Part VI)
26 and IC review (Part VII)”.

27 **27 Paragraph 29(9)(b)**

28 Omit “Ombudsman”, substitute “Information Commissioner”.

29 **28 Subsection 29(9)**

30 Omit “review under section 54”, substitute “internal review (Part VI)
31 and IC review (Part VII)”.

32 **29 Section 31**

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 Repeal the section, substitute:

2 **31 Decision to impose charge—extended period for processing**
3 **request**

4 *Scope*

5 (1) This section applies if:

- 6 (a) on a particular day (the *charge notice day*) an applicant in
7 relation to a request receives a notice under subsection 29(1)
8 or (6) to the effect that the applicant is liable to pay a charge
9 in respect of the request; and
10 (b) the notice is received before the end of the period (the
11 *processing period*) applicable under paragraph 15(5)(b) in
12 relation to the request (or that period as extended, otherwise
13 than under this section).

14 *Extended period for processing request*

15 (2) For the purposes of paragraph 15(5)(b), the processing period for
16 the request is extended (or further extended) by the number of days
17 in the period starting on the charge notice day and ending on the
18 earliest occurring of the following days:

- 19 (a) the day the applicant pays the amount of the charge (or a
20 deposit on account of the charge prescribed by the
21 regulations), whether or not the decision to impose the charge
22 has been considered under section 29, or is the subject of a
23 review under this Act;
24 (b) if the amount of the charge is changed under section 29, or
25 following a review under this Act—the day the applicant
26 pays the amount of the charge (or a deposit on account of the
27 charge prescribed by the regulations) as changed following
28 the review;
29 (c) if, under section 29, or following a review under this Act, a
30 decision is made with the effect that the charge is not
31 imposed—the day the applicant is notified of the decision.

32 Note: A decision under section 29 relating to the imposition of a charge or
33 the amount of a charge may be the subject of an internal review (see
34 Part VI), an IC review (see Part VI) or review by the Tribunal (see
35 Part VIIA).

36 **30 After section 51D**

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 Insert:

2 **51DA Decision not made on request for amendment or annotation—**
3 **deemed refusal**

- 4 (1) This section applies if:
- 5 (a) an application has been made to an agency or Minister under
 - 6 section 48; and
 - 7 (b) the period of 30 days mentioned in section 51D (the *initial*
 - 8 *decision period*) has ended since the day the application was
 - 9 received by, or on behalf of, the agency or Minister; and
 - 10 (c) notice of a decision on the application has not been received
 - 11 by the applicant.

12 *Deemed refusal*

- 13 (2) Subject to this section:
- 14 (a) the principal officer of the agency or the Minister is taken to
 - 15 have made a decision personally refusing to amend or
 - 16 annotate the record of personal information to which the
 - 17 application relates on the last day of the initial decision
 - 18 period; and
 - 19 (b) notice of the decision is taken to have been given under
 - 20 section 26 to the applicant on the same day.

21 *Agency or Minister may apply for further time*

- 22 (3) However, the agency or Minister concerned may apply, in writing,
- 23 to the Information Commissioner for further time to deal with the
- 24 application.
- 25 (4) The Information Commissioner may allow further time considered
- 26 appropriate by the Information Commissioner for the agency or
- 27 Minister to deal with the application.
- 28 (5) If the Information Commissioner allows further time, the
- 29 Information Commissioner may impose any condition that he or
- 30 she considers appropriate.
- 31 (6) Subsection (2) (deemed refusal) does not apply, and is taken never
- 32 to have applied, if the agency or Minister:

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 (a) makes a decision on the application within the further time
2 allowed; and

3 (b) complies with any condition imposed under subsection (5).

4 (7) However, subsection (2) (deemed refusal) applies as if the initial
5 decision period were extended by the time allowed by the
6 Information Commissioner under subsection (4) if the agency or
7 Minister:

8 (a) does not make a decision on the request within the further
9 time allowed; or

10 (b) does not comply with any condition imposed under
11 subsection (5).

12 *No further time allowed*

13 (8) If subsection (7) (deemed refusal after allowance of further time)
14 applies, the Information Commissioner does not have the power to
15 allow further time under this section in relation to the decision
16 taken to be made under subsection (2) in its operation as affected
17 by subsection (7).

18 **31 Part VI (heading)**

19 Repeal the heading, substitute:

20 **Part VI—Internal review of decisions**

21 **32 Before section 53**

22 Insert:

23 **52 Internal review of decisions—guide to this Part**

24 This Part provides for internal review of decisions by agencies,
25 other than decisions made personally by the principal officer of an
26 agency or the responsible Minister. Agencies are required to
27 complete internal reviews within 30 days. However, this period
28 may be extended.

29 Sections 53A, 53B and 53C define the terms *access refusal*
30 *decision*, *access grant decision* and *affected third party*. These
31 terms are used in this Part and in Parts VII and VIIA.

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 **33 Section 53**

2 Omit “Part”, substitute “Act”.

3 **34 Section 53**

4 Omit “, 33A, 34 or 35”, substitute “or 34”.

5 **35 Sections 54 to 57**

6 Repeal the sections, substitute:

7 **53A What is an *access refusal decision*?**

8 An *access refusal decision* is any of the following decisions:

- 9 (a) a decision refusing to give access to a document in
10 accordance with a request;
- 11 (b) a decision giving access to a document but not giving, in
12 accordance with the request, access to all documents to
13 which the request relates;
- 14 (c) a decision purporting to give, in accordance with a request,
15 access to all documents to which the request relates, but not
16 actually giving that access;
- 17 (d) a decision to defer the provision of access to a document
18 (other than a document covered by paragraph 21(1)(d)
19 (Parliament should be informed of contents));
- 20 (e) a decision under section 29 relating to imposition of a charge
21 or the amount of a charge;
- 22 (f) a decision to give access to a document to a qualified person
23 under subsection 47F(5);
- 24 (g) a decision refusing to amend a record of personal information
25 in accordance with an application made under section 48;
- 26 (h) a decision refusing to annotate a record of personal
27 information in accordance with an application made under
28 section 48.

29 Note: If a decision is not made on a request under section 15 within the time
30 required by that section, a decision is taken to have been made to
31 refuse to give access to a document in accordance with the request
32 (see section 15AB).

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 **53B What is an *access grant decision*?**

2 An *access grant decision* is a decision covered by the following
3 table.

4 Note: The table covers documents that may be conditionally exempt under
5 section 47B (item 1), 47G (item 2) or 47F (items 3 and 4). Access
6 must generally be given to a conditionally exempt document unless it
7 would be contrary to the public interest (see section 11A).

8

Access grant decisions

Item	If, in relation to a request for access to a document ...	the <i>access grant decision</i> is ...
1	consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required	a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47B (Commonwealth-State relations); or (b) subsection 11A(5) applies to the document.
2	section 27 (business documents) applies in relation to business information in the document	a decision of an agency or Minister to give access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47G (business documents); or (b) subsection 11A(5) applies to the document.
3	section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person	a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47F (personal privacy); or (b) subsection 11A(5) applies to the document.
4	section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person	a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because: (a) the document is not conditionally exempt under section 47F (personal

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

Access grant decisions

Item	If, in relation to a request for access to a document ...	the <i>access grant decision</i> is ...
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privacy); or
(b) subsection 11A(5) applies to the document.

1 **53C Internal review—who is an *affected third party*?**

2 The following table has effect:

3

Who is an *affected third party*?

Item	If, in relation to a request for access to a document ...	the <i>affected third party</i> for the document is ...
1	consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required	the State.
2	section 27 (business documents) applies in relation to business information in the document	the person or organisation concerned (within the meaning of section 27).
3	section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person	the person.
4	section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person	the legal personal representative of the deceased person.

4 **54 Internal review—access refusal decision**

5 (1) This section applies if an access refusal decision is made in relation
6 to a request to an agency, other than a decision made personally by
7 the principal officer of the agency or the responsible Minister.

8 (2) The applicant in relation to the request may apply under this Part
9 for the review (the *internal review*) of the access refusal decision.

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 **54A Internal review—access grant decision**

2 (1) This section applies if an access grant decision is made in relation
3 to a request to an agency for access to a document, other than a
4 decision made personally by the principal officer of the agency or
5 the responsible Minister.

6 (2) The affected third party for the document may apply under this
7 Part for the review (the *internal review*) of the access grant
8 decision.

9 Note: For *affected third party* see section 53C.

10 **54B Internal review—application for review**

11 (1) An application for internal review must be in writing and must be
12 made:

13 (a) within 30 days, or such further period as the agency allows,
14 after the day the decision is notified to the applicant for
15 internal review (the *internal review applicant*); or

16 (b) in the case of an access refusal decision of a kind mentioned
17 in paragraph 53A(b), (c) or (f), within whichever of the
18 following is the longer period:

19 (i) 30 days, or such further period as the agency allows,
20 after the day the decision is notified to the internal
21 review applicant;

22 (ii) 15 days after the day the access referred to in that
23 paragraph was given (or purported to be given).

24 (2) A decision by an agency to allow a further period for making an
25 application may be made whether or not the time for making such
26 an application has already expired.

27 (3) The agency's power to allow a further period for making an
28 application may be exercised by an officer of the agency who is:

29 (a) acting within the scope of authority exercisable by him or
30 her; and

31 (b) acting in accordance with arrangements approved by the
32 responsible Minister or principal officer of the agency.

EXPOSURE DRAFT

1 **54C Internal review—decision on internal review**

2 *Scope*

- 3 (1) This section applies if an application for internal review of an
4 access refusal decision or an access grant decision (the *original*
5 *decision*) is made in accordance with this Part.

6 *Decision*

- 7 (2) The agency must, as soon as practicable, arrange for a person
8 (other than the person who made the original decision) to review
9 the decision.
- 10 (3) The person must make a fresh decision on behalf of the agency
11 within 30 days after the day on which the application was received
12 by, or on behalf of, the agency.

13 *Notice of decision*

- 14 (4) Section 26 extends to a decision made under this section.

15 **54D Internal review—deemed affirmation of original decision**

- 16 (1) This section applies if:

- 17 (a) an application for internal review has been made to an
18 agency; and
19 (b) the period (the *initial decision period*) of 30 days (as
20 mentioned in subsection 54C(3)) has ended since the day the
21 application for internal review was received by the agency;
22 and
23 (c) notice of a decision on the application has not been received
24 by the internal review applicant.

- 25 (2) Subject to this section:

- 26 (a) the principal officer of the agency is taken to have made a
27 decision personally affirming the original decision on the last
28 day of initial decision period; and
29 (b) notice of the decision is taken to have been given under
30 section 26 to the internal review applicant on the same day.

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

- 1 *Agency may apply for further time*
- 2 (3) However, the agency may apply, in writing, to the Information
3 Commissioner for further time to deal with the application.
- 4 (4) The Information Commissioner may allow further time considered
5 appropriate by the Information Commissioner for the agency to
6 deal with the application.
- 7 (5) If the Information Commissioner allows further time the
8 Information Commissioner may impose any condition that he or
9 she considers appropriate.
- 10 (6) Subsection (2) (deemed affirmation) does not apply, and is taken
11 never to have applied, if the agency:
12 (a) makes a decision on the application within the further time
13 allowed; and
14 (b) complies with any condition imposed under subsection (5).
- 15 (7) However, subsection (2) (deemed affirmation) applies as if the
16 initial decision period were extended by the time allowed by the
17 Information Commissioner under subsection (4) if the agency:
18 (a) does not make a decision on the request within the further
19 time allowed; or
20 (b) does not comply with any condition imposed under
21 subsection (5).
- 22 *No further time allowed*
- 23 (8) If subsection (7) (deemed affirmation after allowance of further
24 time) applies, the Information Commissioner does not have the
25 power to allow further time under this section in relation to the
26 decision taken to be made under subsection (2) in its operation as
27 affected by subsection (7).

28 **54E Internal review—decisions to which this Part does not apply**

- 29 This Part does not apply in relation to:
- 30 (a) a decision on internal review; or
31 (b) a decision in relation to the provision of access to a document
32 upon a request that is taken to have been made under
33 section 15AB or 51DA.

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 **Part VII—Review by Information Commissioner**

2 **Division 1—Guide to this Part**

3 **54F Review by the Information Commissioner—guide**

4 This Part sets up a system for review of decisions by the
5 Information Commissioner.

6 Division 2 sets out the key concepts for the Part.

7 Division 3 sets out the types of decisions that are reviewable.

8 Division 4 provides for the making of applications for review by
9 the Information Commissioner, including the time limits within
10 which applications must be made.

11 The Information Commissioner may make preliminary inquiries
12 before deciding whether or not to conduct a review. In certain
13 circumstances, the Information Commissioner may decide not to
14 review of a decision (or a part of a decision) (see Division 5).

15 Division 6 provides for the procedure in an IC review, including
16 the parties to the proceeding, circumstances in which a hearing
17 may be held and who bears the onus of proof.

18 The Information Commissioner may refer questions of law to the
19 Federal Court of Australia at any time during the review.

20 The Information Commissioner must make a decision on the
21 review in accordance with Division 7.

22 The Information Commissioner has powers to gather information
23 for the purposes of an IC review (see Division 8).

24 In certain circumstances, the Inspector-General of Intelligence and
25 Security must be called to give evidence (see Division 9).

26 An application for review of a decision of the Information
27 Commissioner may be made to the Administrative Appeals
28 Tribunal. A review party may appeal to the Federal Court of

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 Australia, on a question of law, from a decision of the Information
2 Commissioner (see Division 10).

3 **Division 2—Key concepts**

4 **54G Key concepts—what is an *IC review*?**

5 An *IC review* is a review of an IC reviewable decision undertaken
6 by the Information Commissioner under this Part.

7 Note: *IC review* is short for Information Commissioner review.

8 **54H Key concepts—what is an *IC review application*?**

9 An *IC review application* is an application made under Division 4
10 for the review of an IC reviewable decision.

11 Note: *IC review application* is short for Information Commissioner review
12 application.

13 **54J Key concepts—who is an *IC review applicant*?**

14 An *IC review applicant* is a person who applies for an IC review
15 under section 54L or 54M.

16 Note: *IC review applicant* is short for Information Commissioner review
17 applicant.

18 **54K Key concepts—what is an *IC reviewable decision*?**

19 An *IC reviewable decision* is:

- 20 (a) a decision covered by subsection 54L(2) (access refusal
21 decisions); or
22 (b) a decision covered by subsection 54M(2) (access grant
23 decisions).

24 Note: *IC reviewable decision* is short for Information Commissioner
25 reviewable decision.

26 **Division 3—IC reviewable decisions**

27 **54L IC reviewable decisions—access refusal decisions**

- 28 (1) An application may be made to the Information Commissioner for
29 a review of a decision covered by subsection (2).

EXPOSURE DRAFT

- 1 (2) This subsection covers the following decisions:
2 (a) a decision made by an agency on internal review of an access
3 refusal decision (see section 54C);
4 (b) an access refusal decision made personally by the responsible
5 Minister or the principal officer of an agency with respect to
6 a document of the agency;
7 (c) an access refusal decision made by, or on behalf of, a
8 Minister with respect to an official document of the Minister;
9 (d) a decision refusing to allow a further period for making an
10 application for internal review of an access refusal decision
11 (under section 54B).

12 Note: If no decision is made on internal review within 30 days, a decision to
13 affirm the original access refusal decision is taken to have been made
14 (see section 54D).

- 15 (3) The IC review application may be made by, or on behalf of, the
16 person who made the request to which the decision relates.

17 **54M IC reviewable decisions—access grant decisions**

- 18 (1) An application may be made to the Information Commissioner for
19 a review of a decision covered by subsection (2).

- 20 (2) This subsection covers the following decisions:
21 (a) an access grant decision;
22 (b) a decision made by an agency on internal review of an access
23 grant decision (see section 54C);
24 (c) a decision refusing to allow a further period for making an
25 application for internal review of an access grant decision
26 (under section 54B).

27 Note: If no decision is made on internal review within 30 days, a decision to
28 affirm the original access grant decision is taken to have been made
29 (see section 54D).

- 30 (3) The IC review application may be made by, or on behalf of, the
31 following:
32 (a) in any case—an affected third party for the document in
33 relation to which the decision covered by subsection (2) was
34 made;
35 (b) in a case covered by paragraph (2)(b)—the person who made
36 the request to which the decision relates.

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1 Note: For *affected third party* see section 53C.

2 **Division 4—IC review applications**

3 **Subdivision A—Making an application**

4 **54N IC review applications—application**

5 *Content of application*

- 6 (1) An IC review application must be in writing, and must:
- 7 (a) give details of how notices under this Part may be sent to the
- 8 IC review applicant (for example, by providing an electronic
- 9 address to which notices may be sent by electronic
- 10 communication); and
- 11 (b) give particulars of the IC reviewable decision of which an IC
- 12 review is sought.

13 Note: For who may make an IC review application, see sections 54L and

14 54M.

- 15 (2) The IC review application may contain particulars of the basis on
- 16 which the IC review applicant disputes the IC reviewable decision.
- 17 (3) The Office of the Information Commissioner must provide
- 18 appropriate assistance to a person who:
- 19 (a) wishes to make an IC review application; and
- 20 (b) requires assistance to prepare the IC review application.

21 *Delivery of application*

- 22 (4) The IC review application must be sent to the Information
- 23 Commissioner. The IC review application may be sent in any of
- 24 the following ways:
- 25 (a) delivery to the Information Commissioner at the address of
- 26 the Information Commissioner specified in a current
- 27 telephone directory;
- 28 (b) postage by pre-paid post to an address mentioned in
- 29 paragraph (a);
- 30 (c) sending by electronic communication to an electronic address
- 31 specified by the Information Commissioner.

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1 **54P IC review applications—requirement to notify affected third** 2 **parties**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) an agency or Minister decides not to give access to a
6 document to which a consultation requirement applies under
7 section 26A, 27 or 27A; and
- 8 (b) an IC review application is made for an IC review of that
9 decision.

10 *Requirement to notify*

- 11 (2) The agency or Minister must, as soon as practicable, take all
12 reasonable steps to notify the affected third party for the document
13 of the application.

14 Note 1: For *affected third party* see section 53C.

15 Note 2: The agency or Minister is not required to give notice if the
16 Information Commissioner orders that it is not appropriate to do so in
17 the circumstances (see section 54Q).

- 18 (3) The agency or Minister must, as soon as practicable, give a copy of
19 the notice to the Information Commissioner.

20 **54Q IC review applications—circumstances in which not giving** 21 **notice is appropriate**

- 22 (1) This section applies in relation to a document to which a
23 consultation requirement applies under section 27 or 27A.

- 24 (2) An agency or Minister is not required to notify an affected third
25 party for the document under subsection 54P(2) if:
- 26 (a) the agency or the Minister applies to the Information
27 Commissioner for an order that it would not be appropriate to
28 notify the affected third party in the circumstances covered
29 by subsection (3); and
- 30 (b) the Information Commissioner makes the order.

31 Note: For *affected third party* see section 53C.

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- 1 (3) The circumstances covered by this subsection are whether
2 notifying the affected third party would, or could reasonably be
3 expected to, do any of the following:
- 4 (a) prejudice the conduct of an investigation of a breach, or
5 possible breach, of the law, or a failure, or possible failure, to
6 comply with a law relating to taxation;
 - 7 (b) prejudice the enforcement or proper administration of the law
8 in a particular instance;
 - 9 (c) disclose, or enable a person to ascertain, the existence or
10 identity of a confidential source of information, or the
11 non-existence of a confidential source of information, in
12 relation to the enforcement or administration of the law;
 - 13 (d) endanger the life or physical safety of any person;
 - 14 (e) cause damage to the security, defence or international
15 relations of the Commonwealth.

16 **54R IC review applications—withdrawal**

- 17 (1) An IC review applicant may, in writing, withdraw the IC review
18 application at any time before the Information Commissioner
19 makes a decision under section 55J.
- 20 (2) If the IC review application is withdrawn, it is taken never to have
21 been made.

22 **Subdivision B—Time limits**

23 **54S IC review applications—time limits**

24 *Access refusal decisions*

- 25 (1) An IC review application in relation to a decision covered by
26 subsection 54L(2) (access refusal decisions) must be made within
27 60 days after the day notice of the IC reviewable decision was
28 given under section 26.

29 *Access grant decisions*

- 30 (2) An IC review application in relation to a decision covered by
31 subsection 54M(2) (access grant decisions) must be made within
32 30 days after the day notice under section 26A, 27 or 27A was

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1 given to the affected third party for the document in relation to
2 which the decision was made.

3 Note: For *affected third party* see section 53C.

4 **54T IC review applications—extension of time**

5 *Application for extension of time*

- 6 (1) A person may apply to the Information Commissioner for an
7 extension of time for making an IC review application.
- 8 (2) The Information Commissioner may extend the time if the
9 Information Commissioner is satisfied that it is reasonable in all
10 the circumstances to do so.
- 11 (3) The time for making an IC review application may be extended
12 under this section although the period mentioned in section 54S has
13 ended.

14 *Requirement to notify*

- 15 (4) Before determining an application under subsection (1), the
16 Information Commissioner may require the IC review applicant to
17 give notice of the application to a specified person or persons that
18 the Information Commissioner considers is affected by the
19 application.

20 *Person may oppose application*

- 21 (5) A person to whom notice is given under subsection (4) may notify
22 the Information Commissioner in writing that he or she opposes the
23 application under subsection (1). The person must do so within the
24 time required by the Information Commissioner.

25 *Reasonable opportunity to be heard*

- 26 (6) If notice is given under subsection (5), the Information
27 Commissioner must give the IC review applicant and the person to
28 whom notice has been given under subsection (4) a reasonable
29 opportunity to present their cases before determining the
30 application under subsection (1).

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1 **Division 5—Decision to review**

2 **54U Decision to review—interpretation**

3 This Division applies to a part of an IC review application as if a
4 reference to an IC review application were a reference to the part
5 of the IC review application.

6 **54V Decision to review—preliminary inquiries**

7 The Information Commissioner may make inquiries of the review
8 parties for the purpose of determining whether or not to undertake
9 an IC review.

10 **54W Decision to review—discretion not to review**

11 The Information Commissioner may decide not to undertake an IC
12 review, or not to continue to undertake an IC review, if:

13 (a) the Information Commissioner is satisfied of any of the
14 following:

15 (i) the IC review application is frivolous, vexatious,
16 misconceived, lacking in substance or not made in good
17 faith;

18 (ii) the IC review applicant has failed to cooperate in
19 progressing the IC review application, or the IC review,
20 without reasonable excuse;

21 (iii) the Information Commissioner cannot contact the IC
22 review applicant after making reasonable attempts; or

23 (b) the Information Commissioner is satisfied that the interests of
24 the administration of this Act make it desirable that the IC
25 reviewable decision be considered by the Tribunal; or

26 (c) the IC review applicant fails to comply with a direction of the
27 Information Commissioner.

28 Note 1: The Information Commissioner may make a decision under this
29 section to review only part of an IC reviewable decision (see
30 section 54U).

31 Note 2: If the Information Commissioner makes a decision under
32 paragraph (b), an application for review may be made to the Tribunal
33 for review of the IC reviewable decision (see section 57A).

34 Note 3: Division 1 of Part VIII sets out the circumstances in which a vexatious
35 applicant declaration may be made in relation to a person. A

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1 declaration may permit the Information Commissioner to refuse to
2 consider an IC review application if the person makes the IC review
3 application under this section without the written permission of the
4 Information Commissioner.

5 **54X Decision to review—notice requirement if discretion not to** 6 **review exercised**

- 7 (1) This section applies if the Information Commissioner decides not
8 to undertake an IC review, or not to continue to undertake an IC
9 review.
- 10 (2) The Information Commissioner must, as soon as practicable, notify
11 the review parties of the decision in writing.
- 12 (3) The notice must:
- 13 (a) state the reasons for the Information Commissioner's
14 decision; and
 - 15 (b) if the Information Commissioner makes a decision under
16 paragraph 54W(b)—state that an application for review of
17 the relevant IC reviewable decision may be made to the
18 Tribunal under section 57A.

19 Note: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets
20 out the time within which the application for review must be made.

- 21 (4) However, the notice must not include:
- 22 (a) exempt matter; or
 - 23 (b) information of the kind referred to in subsection 25(1).

24 Note: Subsection 25(1) deals with information about the existence or
25 otherwise of certain documents.

26 **54Y Decision to review—actual decisions made after IC review has** 27 **commenced**

- 28 (1) This section applies if:
- 29 (a) an agency or Minister has been taken to have made a decision
30 (the *deemed decision*) under subsection 15AB(3), 51DA(2)
31 or 54D(2); and
 - 32 (b) a person makes an IC review application for review of the
33 deemed decision; and

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- 1 (c) the Information Commissioner has not made a decision under
2 section 54W (decision not to review) or 55J (decision on
3 review) in relation to the deemed decision; and
4 (d) subsection 15AB(7), 51DA(6) or 54D(6) applies in relation
5 to a decision (the *actual decision*) made by the agency or
6 Minister.
- 7 (2) The Information Commissioner must deal with the IC review
8 application for review of the deemed decision as if it were an IC
9 review application for the review of the actual decision, subject
10 otherwise to this Part.

11 **Division 6—Procedure in IC review**

12 **54Z Procedure in IC review—general notice requirement**

- 13 Before undertaking an IC review, the Information Commissioner
14 must inform:
- 15 (a) the person, agency or Minister who made the decision; or
16 (b) if the IC review application is made under section 54M
17 (access grant decisions)—the person who made the request.

18 **55 Procedure in IC review—general**

- 19 (1) The Information Commissioner may, for the purposes of an IC
20 review, review an IC reviewable decision by considering the
21 documents or other material lodged with or provided to the
22 Information Commissioner, and without holding a hearing, if:
- 23 (a) it appears to the Information Commissioner that the issues for
24 determination on the IC review can be adequately determined
25 in the absence of the review parties; and
26 (b) the Information Commissioner is satisfied that there are no
27 unusual circumstances that would warrant the Information
28 Commissioner holding a hearing; and
29 (c) none of the review parties have applied for a hearing under
30 section 55B.
- 31 (2) The Information Commissioner may otherwise:
- 32 (a) conduct an IC review in whatever way he or she considers
33 appropriate; and

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- 1 (b) use any technique that the Information Commissioner
2 considers appropriate to facilitate an agreed resolution of
3 matters at issue in the IC review (for example by using
4 techniques that are used in alternative dispute resolution
5 processes); and
6 (c) allow a person to participate in an IC review by any means of
7 communication; and
8 (d) obtain any information from any person, and make any
9 inquiries, that he or she considers appropriate; and
10 (e) give written directions as to the procedure to be followed in
11 relation to:
12 (i) IC reviews generally; or
13 (ii) a particular IC review.
- 14 Example 1: The Information Commissioner may allow a person under
15 paragraph (2)(c) to participate in a hearing by telephone.
- 16 Example 2: The Information Commissioner may give written directions under
17 subparagraph (2)(e)(ii) as to the procedure to be followed when
18 dealing with confidential documents in a particular IC review.
- 19 (3) A direction given under paragraph (2)(e) is not a legislative
20 instrument.
- 21 (4) Without limiting subsection (2), the Information Commissioner
22 must, in relation to an IC review:
23 (a) conduct the IC review with as little formality and as little
24 technicality as is possible given:
25 (i) the requirements of this Act; and
26 (ii) the requirements of any other law; and
27 (iii) a proper consideration of the matters before the
28 Information Commissioner; and
29 (b) ensure that each review party is given a reasonable
30 opportunity to present his or her case; and
31 (c) conduct the IC review in as timely a manner as is possible
32 given the matters mentioned in subparagraphs (a)(i) to (iii).
- 33 (5) If the Information Commissioner holds a hearing, the Information
34 Commissioner:
35 (a) must hold the hearing in public, unless the Information
36 Commissioner is satisfied that it is not desirable to do so:
37 (i) because of the confidential nature of any evidence or
38 matter relating to the proceeding; or
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- 1 (ii) for any other reason; and
2 (b) is not bound by the rules of evidence; and
3 (c) may hold a part of the hearing in the absence of a review
4 party (or a review party's representative) if it is necessary to
5 do so to prevent disclosure to the review party (or the review
6 party's representative).

7 **55A Procedure in IC review—parties to proceeding**

8 *Who are the review parties?*

- 9 (1) The parties to an IC review (the *review parties*) are as follows:
10 (a) the IC review applicant;
11 (b) the principal officer of the agency, or the Minister, to whom
12 the request was made;
13 (c) an affected third party (if any) required to be notified of the
14 IC review application under section 54P (requirement to
15 notify affected third parties);
16 (d) a party to the proceeding under subsection (3).

17 Note: For *affected third party* see section 53C.

18 *Application to become a review party*

- 19 (2) If an IC review application is made in relation to an IC reviewable
20 decision, a person whose interests are affected by the IC
21 reviewable decision may apply, in writing, to the Information
22 Commissioner to be a review party.
23 (3) The Information Commissioner may, by notice in writing, make a
24 person who applies under subsection (2) an IC review party.

25 **55B Procedure in IC review—application for hearing**

- 26 (1) At any time during an IC review, a review party may apply to the
27 Information Commissioner requesting that the Information
28 Commissioner hold a hearing for the purposes of the IC review.
29 (2) The Information Commissioner must notify the other review
30 parties of the application.
31 (3) The Information Commissioner must:

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- 1 (a) give all review parties a reasonable opportunity to make
2 submissions on the application; and
3 (b) decide whether or not to hold a hearing.

4 **55C Procedure in IC review—representation**

5 At the hearing of a proceeding before the Information
6 Commissioner, a review party may:

- 7 (a) appear in person; or
8 (b) be represented by another person.

9 **55D Procedure in IC review—onus**

10 (1) Subject to subsection (2), in an IC review the principal officer of
11 the agency, or the Minister, to whom the request was made has the
12 onus of establishing that:

- 13 (a) a decision given in respect of the request was justified; or
14 (b) the Information Commissioner should give a decision
15 adverse to the IC review applicant.

16 (2) In an IC review of a decision for which an IC review application is
17 made under section 54M (access grant decisions), the affected third
18 party for the document in relation to which the decision was made
19 has the onus of establishing that:

- 20 (a) a decision refusing the request is justified; or
21 (b) the Information Commissioner should give a decision
22 adverse to the person who made the request.

23 Note: For *affected third party* see section 53C.

24 **55E Procedure in IC review—inadequate reasons from decision** 25 **maker**

26 (1) This section applies if:

- 27 (a) an IC review application is made in relation to an IC
28 reviewable decision made by an agency or a Minister; and
29 (b) the agency or Minister was required to provide a statement of
30 reasons under subsection 26(1) for the decision to the person
31 who made the request; and
32 (c) the Information Commissioner believes that:
33 (i) no statement has been provided; or
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- 1 (ii) the statement that has been provided is inadequate.
- 2 (2) The Information Commissioner may, by notice in writing, require
3 the agency or Minister to provide an adequate statement of reasons
4 as mentioned in subsection 26(1).
- 5 (3) If the Information Commissioner gives notice under subsection (2),
6 the agency or Minister must provide the adequate statement of
7 reasons to the IC review applicant and the Information
8 Commissioner within:
- 9 (a) the period specified in the notice; or
10 (b) if no period is specified in the notice—28 days after the day
11 the notice was given to the agency or Minister.

12 **55F Procedure in IC review—review parties reach agreement**

- 13 (1) This section applies if, at any stage of an IC review:
- 14 (a) the review parties reach agreement as to the terms of a
15 decision on an IC review:
- 16 (i) on the IC review application; or
17 (ii) in relation to a part of the IC review application; or
18 (iii) in relation to a matter arising out of the IC review
19 application; and
- 20 (b) the agreement is acceptable to all of the review parties; and
21 (c) the terms of the agreement are reduced to writing, signed by,
22 or on behalf of, the review parties and given to the
23 Information Commissioner; and
24 (d) the Information Commissioner is satisfied that a decision in
25 those terms or consistent with those terms would be within
26 the powers of the Information Commissioner.
- 27 (2) The Information Commissioner may, if satisfied that it is
28 appropriate:
- 29 (a) in the case of an agreement as to the terms of a decision of
30 the Information Commissioner on the IC review—make a
31 decision in accordance with those terms without completing
32 the IC review; or
33 (b) in the case of an agreement that relates to a part of the
34 proceeding or a matter arising out of the proceeding—in the
35 Information Commissioner’s decision on the IC review, give

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1 effect to the terms of the agreement without completing the
2 IC review with respect to the part.

3 **55G Procedure in IC review—reference of questions of law to**
4 **Federal Court of Australia**

- 5 (1) The Information Commissioner may, at any time during an IC
6 review, refer a question of law arising in an IC review to the
7 Federal Court of Australia for decision.
- 8 (2) The Information Commissioner may refer the question of law:
9 (a) on the application of a review party; or
10 (b) on the Information Commissioner’s initiative.
- 11 (3) The Federal Court of Australia has jurisdiction to hear and
12 determine a question of law referred to it.
- 13 (4) The jurisdiction of the Federal Court of Australia may be exercised
14 by a single judge of the Court.
- 15 (5) If a question of law is referred, the Information Commissioner
16 must not, for the purposes of the IC review:
17 (a) give a decision to which the question is relevant before the
18 Federal Court of Australia makes a decision in relation to the
19 reference; or
20 (b) proceed in a manner, or make a decision, that is inconsistent
21 with the opinion of the Federal Court of Australia on the
22 question.

23 **55H Procedure in IC review—sending of documents to, and**
24 **disclosure of documents by, the Federal Court of**
25 **Australia**

- 26 If a question of law is referred under section 55G:
- 27 (a) the Information Commissioner must cause all documents and
28 information in the possession of the Information
29 Commissioner that relate to the IC review and to the
30 reference to be sent to the Federal Court of Australia; and
31 (b) at the conclusion of the proceeding before the Federal Court
32 of Australia, the Court must cause the documents to be
33 returned to the Information Commissioner.

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1 **Division 7—Decision on IC review**

2 **55J Decision on IC review—decision of Information Commissioner**

- 3 (1) After undertaking an IC review, the Information Commissioner
4 must make a decision in writing:
5 (a) affirming the IC reviewable decision; or
6 (b) varying the IC reviewable decision; or
7 (c) setting aside the IC reviewable decision and making a
8 decision in substitution for that decision.
- 9 (2) For the purposes of implementing a decision on an IC review, the
10 Information Commissioner may perform the functions, and
11 exercise the powers, of the person who made the IC reviewable
12 decision.
- 13 (3) A decision of the Information Commissioner on an IC review has
14 the same effect as a decision of the agency or Minister who made
15 the IC reviewable decision.

16 *Content of the decision*

- 17 (4) A decision on an IC review must include the following:
18 (a) a statement of reasons for the decision;
19 (b) a statement of the rights of the review parties to apply to the
20 Tribunal for review of the decision under section 57A.
- 21 (5) However, a decision on an IC review must not include:
22 (a) information of the kind referred to in subsection 25(1); or
23 (b) exempt matter.

24 Note: Subsection 25(1) deals with information about the existence or
25 otherwise of certain documents.

26 *Providing copy of decision*

- 27 (6) The Information Commissioner must give a copy of a decision on
28 an IC review to each review party.

29 *Copy of decision prima facie evidence*

- 30 (7) A document is prima facie evidence of a decision on an IC review
31 if:
-

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- 1 (a) the document purports to be a copy of the decision; and
2 (b) the document purports to be certified by, or on behalf of, the
3 Information Commissioner to be a true copy of the decision.

4 *Publication requirement*

- 5 (8) The Information Commissioner must publish a decision on an IC
6 review to members of the public generally.

7 **55K Decision on IC review—no power to give access to exempt**
8 **documents**

- 9 (1) This section applies if it is established in proceedings on an IC
10 review that a document is an exempt document.
11 (2) The Information Commissioner does not have power to decide that
12 access to the document is to be given, so far as it contains exempt
13 matter.

14 **55L Decision on IC review—limitation on amending records**

- 15 (1) The Information Commissioner may, in a decision under
16 section 55J, recommend that an amendment be made to a record
17 that relates to a record of an opinion only if he or she is satisfied of
18 either (or both) of the following:
19 (a) the opinion was based on a mistake of fact;
20 (b) the author of the opinion was biased, unqualified to form the
21 opinion or acted improperly in conducting the factual
22 inquiries that led to the formation of the opinion.
23 (2) The Information Commissioner must not, in a decision under
24 section 55J, recommend that an amendment be made to a record if
25 he or she is satisfied of either of the following:
26 (a) the record is a record of a decision, under an enactment, by a
27 court, tribunal, authority or person;
28 (b) the decision whether to amend the record involves the
29 determination of a question that the person seeking
30 amendment of the record is, or has been, entitled to have
31 determined by the agency (on internal review), the
32 Information Commissioner, a court or tribunal.

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1 **55M Decision on IC review—obligation to comply with decision**

2 A principal officer of an agency or a Minister must comply with a
3 decision of the Information Commissioner under section 55J on an
4 IC review.

5 **55N Decision on IC review—enforcement of decision against agency**

6 (1) If the principal officer of an agency or a Minister fails to comply
7 with section 55M, an application may be made to the Federal Court
8 of Australia for an order directing the principal officer or Minister
9 to comply.

10 (2) The application may be made by:

- 11 (a) the Information Commissioner; or
12 (b) the IC review applicant.

13 (3) The court may make any other orders that it thinks fit to secure
14 compliance by the principal officer or the Minister.

15 (4) An application under subsection (1) may only be made if:

- 16 (a) the time has ended for making an application to the Tribunal
17 under section 57A for review of the Information
18 Commissioner's decision; and
19 (b) such an application is not made before the end of the time.

20 **55P Decision on IC review—correction of errors**

21 (1) The Information Commissioner may correct an obvious error in a
22 decision under section 55J of the Information Commissioner on an
23 IC review.

24 Example: The following are examples of obvious errors:

- 25 (a) an obvious clerical or typographical error in the text of the
26 decision or statement of reasons;
27 (b) an inconsistency between the decision and the statement of
28 reasons.

29 (2) The Information Commissioner may correct an obvious error:

- 30 (a) on an application by a review party; or
31 (b) on the Information Commissioner's initiative.

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1 **Division 8—Information gathering powers**

2 **55Q Information gathering powers—obliging production of** 3 **information and documents**

4 *Scope*

- 5 (1) This section applies if the Information Commissioner has reason to
6 believe that a person has information, or a document, relevant to an
7 IC review.
- 8 (2) This section applies subject to sections 55S (exempt documents
9 generally) and 55T (particular exempt documents).

10 *Notice to produce*

- 11 (3) The Information Commissioner may, by written notice, require a
12 person to, for the purposes of an IC review:
- 13 (a) give the Information Commissioner information of a kind
14 specified by the notice; or
- 15 (b) produce to the Information Commissioner a document
16 specified by the notice.
- 17 (4) The notice must:
- 18 (a) be in writing; and
- 19 (b) specify the place at which the person must comply with the
20 notice; and
- 21 (c) state that the person must comply with the notice:
- 22 (i) within a specified period that is not less than 14 days
23 after the day on which the person is given the notice; or
- 24 (ii) at a specified time that is not less than 14 days after the
25 time at which the person is given the notice.

26 *Offence for failure to comply*

- 27 (5) A person commits an offence if:
- 28 (a) the person is subject to a requirement specified in a notice
29 under subsection (3); and
- 30 (b) the person engages in conduct; and
- 31 (c) the person's conduct breaches the requirement.

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1 Penalty for a contravention of this subsection: Imprisonment for 6
2 months.

3 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
4 criminal responsibility.

5 **55R Information gathering powers—dealings with documents**

6 *What the Information Commissioner may do with documents*

7 (1) The Information Commissioner may do any of the following in
8 relation to any documents produced in accordance with a notice
9 under subsection 55Q(3):

- 10 (a) take possession of the documents;
11 (b) make copies of the documents;
12 (c) take extracts from the documents;
13 (d) hold the documents for a period that is necessary for the
14 purposes of the IC review.

15 *Information Commissioner must permit access by those entitled*

16 (2) For the purposes of an IC review, the Information Commissioner
17 must permit a person to inspect a document that the person would
18 be entitled to inspect if the document were not held by the
19 Information Commissioner.

20 (3) The Information Commissioner must permit the person to inspect
21 the document at any reasonable time.

22 **55S Information gathering powers—production of exempt 23 documents generally**

24 *Scope*

25 (1) This section applies to an IC review of a decision in relation to a
26 document if:

- 27 (a) the principal officer of an agency or a Minister claims that
28 the document is an exempt document; and
29 (b) section 55T does not apply to the document.

30 Note: Section 55T deals with the production of documents that are claimed
31 to be exempt documents under section 33 (national security etc.) or 34
32 (Cabinet documents).

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Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 *Exempt document produced under obligation*

2 (2) The Information Commissioner may, for the purposes of deciding
3 whether the document is an exempt document, require the
4 document to be produced.

5 (3) If the Information Commissioner is satisfied that the document is
6 an exempt document, the Information Commissioner must return
7 the document to the person by whom it was produced.

8 *Production to determine whether access can be given to part of*
9 *document*

10 (4) The Information Commissioner may require the production of an
11 exempt document for the purpose of determining whether it is
12 practicable for an agency or a Minister to give access to an edited
13 copy of the document.

14 (5) If the document is produced to the Information Commissioner
15 (whether under this section or voluntarily), only the following
16 persons may have access to the document, or to the contents of the
17 document:

18 (a) the Information Commissioner;

19 (b) a member of the staff of the Information Commissioner in the
20 course of the performance of his or her duties as a member of
21 that staff.

22 **55T Information gathering powers—production of national security** 23 **and cabinet documents**

24 (1) This section applies to an IC review of a decision in relation to a
25 document that is claimed to be an exempt document under
26 section 33 (national security documents) or 34 (cabinet
27 documents).

28 (2) The Information Commissioner may only require the production of
29 the document in accordance with this section.

30 (3) If the Information Commissioner is not satisfied by evidence on
31 affidavit or otherwise that the document is an exempt document
32 under section 33 or 34, the Information Commissioner may require
33 the document to be produced for inspection by the Information
34 Commissioner.

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Schedule 4 Information Commissioner amendments

Part 1 Main amendments

- 1 (4) If the Information Commissioner is satisfied that the document is
2 an exempt document, the Information Commissioner must return
3 the document to the person by whom it was produced without
4 permitting a person to have access to the document or disclosing
5 the contents of the document to a person, unless the person is:
6 (a) the Information Commissioner; or
7 (b) a member of the staff of the Information Commissioner in the
8 course of the performance of his or her duties as a member of
9 that staff; or
10 (c) in the circumstances permitted under paragraph
11 55ZC(3)(a)—the Inspector-General of Intelligence and
12 Security.

13 **55U Information gathering powers—further searches for a** 14 **document**

- 15 (1) This section applies to an IC review in relation to a request for
16 access to a document if:
17 (a) access to the document is refused under section 24A
18 (document cannot be found etc.); or
19 (b) access is purportedly given to the document (amongst others
20 to which the request relates), but is not actually given.
- 21 (2) The Information Commissioner may require the agency or Minister
22 concerned to conduct further searches for the document.

23 **55V Information gathering powers—obliging persons to appear**

24 *Notice to appear*

- 25 (1) The Information Commissioner may, by written notice, require a
26 person to appear before the Information Commissioner to answer
27 questions for the purposes of an IC review.
- 28 (2) The notice must:
29 (a) be in writing; and
30 (b) state that the person must comply with the notice at a
31 specified time that is not less than 14 days after the time at
32 which the person is given the notice; and
33 (c) specify the place at which the person must comply with the
34 notice.

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
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1 *Offence for failure to comply*

- 2 (3) A person commits an offence if:
- 3 (a) the person is subject to a requirement specified in a notice
- 4 under subsection (1); and
- 5 (b) the person engages in conduct; and
- 6 (c) the person's conduct breaches the requirement.

7 Penalty for a contravention of this subsection: 6 months

8 imprisonment.

9 Note: Chapter 2 of the *Criminal Code* sets out the general principles of

10 criminal responsibility.

11 **55W Information gathering powers—administration of oath or**

12 **affirmation**

- 13 (1) If, by a notice under subsection 55V(1), the Information
- 14 Commissioner requires a person to appear before him or her, the
- 15 Information Commissioner may:
- 16 (a) administer an oath or affirmation to the person; and
- 17 (b) examine the person on oath or affirmation.
- 18 (2) The oath or affirmation to be taken or made by a person for the
- 19 purposes of this section is an oath or affirmation that the answers
- 20 the person will give will be true.

- 21 (3) A person commits an offence if:
- 22 (a) the person is required under this section to be examined on
- 23 oath or affirmation; and
- 24 (b) the person engages in conduct; and
- 25 (c) the person's conduct breaches that requirement.

26 Penalty for a contravention of this subsection: 6 months

27 imprisonment.

28 Note: Chapter 2 of the *Criminal Code* sets out the general principles of

29 criminal responsibility.

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Schedule 4 Information Commissioner amendments

Part 1 Main amendments

1 **55X Information gathering powers—no loss of legal professional**
2 **privilege**

3 Information or a document does not cease to be the subject of legal
4 professional privilege merely because it is given, provided,
5 produced or referred to for the purposes of this Part.

6 **55Y Information gathering powers—protection from liability**

7 (1) This section applies if a person does any of the following for the
8 purposes of an IC review:

- 9 (a) gives information;
10 (b) produces a document;
11 (c) answers a question.

12 (2) If this section applies:

- 13 (a) civil proceedings do not lie against the person in respect of
14 loss, damage or injury of any kind suffered by another person
15 because the person does any of the matters mentioned in
16 paragraphs (1)(a) to (c) in good faith; and
17 (b) the person is not liable to a penalty under the provisions of
18 any law because he or she does any of those matters.

19 (3) This section applies whether or not the person is required to do a
20 thing mentioned in subsection (1) in accordance with this Division.

21 **Division 9—Evidence by Inspector-General of Intelligence**
22 **and Security**

23 **55Z Evidence by Inspector-General of Intelligence and Security—**
24 **scope**

25 This Division applies in an IC review of a decision in relation to a
26 document that is claimed to be an exempt document under
27 section 33 (national security documents).

28 **55ZA Evidence by Inspector-General of Intelligence and Security—**
29 **request to give evidence**

30 (1) Before determining that a document is not an exempt document
31 under section 33, the Information Commissioner must request the

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- 1 Inspector-General of Intelligence and Security to appear personally
2 and give evidence on:
- 3 (a) the damage that would, or could reasonably be expected to,
4 be caused to:
- 5 (i) the security of the Commonwealth; or
6 (ii) the defence of the Commonwealth; or
7 (iii) the international relations of the Commonwealth;
8 if access to the document were given in accordance with the
9 request; or
- 10 (b) whether giving access to the document in accordance with
11 the request would divulge any information or matter
12 communicated in confidence by, or on behalf of, a foreign
13 government, an authority of a foreign government or an
14 international organisation to the Government of the
15 Commonwealth, to an authority of the Commonwealth or to a
16 person receiving the communication on behalf of the
17 Commonwealth or of an authority of the Commonwealth.
- 18 (2) Before determining that an agency or Minister must grant access to
19 a copy of the document with deletions, the Information
20 Commissioner must request the Inspector-General to appear
21 personally and give evidence on:
- 22 (a) the damage that would, or could reasonably be expected to,
23 be caused to:
- 24 (i) the security of the Commonwealth; or
25 (ii) the defence of the Commonwealth; or
26 (iii) the international relations of the Commonwealth;
27 if the proposed deletions were not made; or
- 28 (b) whether giving access to the document without the proposed
29 deletions would divulge any information or matter
30 communicated in confidence by, or on behalf of, a foreign
31 government, an authority of a foreign government or an
32 international organisation to the Government of the
33 Commonwealth, to an authority of the Commonwealth or to a
34 person receiving the communication on behalf of the
35 Commonwealth or of an authority of the Commonwealth.
- 36 (3) Before hearing the evidence of the Inspector-General, the
37 Information Commissioner must hear any evidence to be given or
38 submissions to be made by, or on behalf of, the agency to which, or

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Part 1 Main amendments

1 the Minister to whom, the request was made for access to the
2 document.

3 (4) The Information Commissioner is not bound by any opinion of the
4 Inspector-General expressed while giving evidence under this
5 Subdivision.

6 **55ZB Evidence by Inspector-General of Intelligence and Security—** 7 **compliance with request**

8 The Inspector-General of Intelligence and Security must comply
9 with a request under section 55ZA unless, in the opinion of the
10 Inspector-General, the Inspector-General is not appropriately
11 qualified to give evidence on the matters in relation to which the
12 Inspector-General has been requested to give evidence.

13 **55ZC Evidence by Inspector-General of Intelligence and Security—** 14 **procedural matters**

15 (1) This section applies for the purposes of enabling the
16 Inspector-General of Intelligence and Security to comply with a
17 request under section 55ZA.

18 (2) The Information Commissioner must allow the Inspector-General
19 to take possession of, and make copies of or take extracts from, any
20 document given to the Information Commissioner for the purposes
21 of the proceeding.

22 (3) The Inspector-General may require the production of the
23 following:

24 (a) the document that is claimed to be an exempt document
25 under section 33 by the agency to which or the Minister to
26 whom the request was made for access to the document;

27 (b) any document of an agency or official document of a
28 Minister that relates to the document mentioned in
29 subsection (2) by the agency or Minister.

30 (4) The Inspector-General may make copies of, or take extracts from,
31 the documents mentioned in subsection (3).

32 (5) After the period that is reasonably necessary for the purposes of
33 giving evidence to the Information Commissioner, the
34 Inspector-General must:

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- 1 (a) return the original of any document to the Information
2 Commissioner or to the agency or Minister; and
3 (b) destroy any copies of or extracts taken from any document.
- 4 (6) The Inspector-General must permit a person to inspect a document
5 that the person would be entitled to inspect if the document were
6 not held by the Inspector-General.
- 7 (7) The Inspector-General must permit the person to inspect the
8 document at all reasonable times.
- 9 (8) The Information Commissioner must allow the Inspector-General a
10 period within which to consider the documents mentioned in
11 subsections (2) to (4) that is reasonable having regard to:
12 (a) the nature of the evidence that the Inspector-General has been
13 requested to give; and
14 (b) the time required by the Inspector-General to perform the
15 Inspector-General's other functions.

16 **Division 10—Appeals**

17 **56 Appeals—appeals to Federal Court of Australia on questions of** 18 **law**

- 19 (1) A review party may appeal to the Federal Court of Australia, on a
20 question of law, from a decision of the Information Commissioner
21 on an IC review.
- 22 (2) An appeal under this section must be instituted:
23 (a) either:
24 (i) not later than 28 days after the day a decision under
25 section 55J of the Information Commissioner on an IC
26 review is given to the review party; or
27 (ii) within the further time that the Federal Court of
28 Australia allows; and
29 (b) in any way that is prescribed by rules of court made under the
30 *Federal Court of Australia Act 1976*.
- 31 (3) The Federal Court of Australia has jurisdiction to hear and
32 determine appeals instituted under this section.

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- 1 (4) The jurisdiction of the Federal Court of Australia under
2 subsection (3) includes jurisdiction to make findings of fact under
3 section 56A.
- 4 (5) The Federal Court of Australia:
5 (a) must hear and determine the appeal; and
6 (b) may make any order or orders that it thinks appropriate by
7 reason of its decision.
- 8 (6) Without limiting subsection (5), the orders that the Federal Court
9 of Australia may make include the following:
10 (a) an order affirming the decision of the Information
11 Commissioner;
12 (b) an order setting aside the decision of the Information
13 Commissioner and making a decision in substitution for the
14 decision;
15 (c) an order remitting the case to be considered and decided
16 again by the Information Commissioner in accordance with
17 the directions of the Court:
18 (i) with or without the holding of a hearing; and
19 (ii) with or without the hearing of further evidence.

20 **56A Appeals—Federal Court of Australia may make findings of fact**

- 21 (1) If a review party appeals to the Federal Court of Australia under
22 section 56, the Court may make findings of fact if:
23 (a) the findings of fact are not inconsistent with findings of fact
24 made by the Information Commissioner (other than findings
25 made by the Information Commissioner as the result of an
26 error of law); and
27 (b) it appears to the Court that it is convenient for the Court to
28 make the findings of fact, having regard to all of the
29 following:
30 (i) the extent (if any) to which it is necessary for facts to be
31 found;
32 (ii) the means by which those facts might be established;
33 (iii) the expeditious and efficient resolution of the whole of
34 the matter to which the IC review relates;

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- 1 (iv) the relative expense to the parties of the Court, rather
2 than the Information Commissioner, making the
3 findings of fact;
- 4 (v) the relative delay to the parties of the Court, rather than
5 the Information Commissioner, making the findings of
6 fact;
- 7 (vi) whether any of the parties considers that it is
8 appropriate for the Court, rather than the Information
9 Commissioner, to make the findings of fact;
- 10 (vii) such other matters (if any) as the Court considers
11 relevant.
- 12 (2) For the purposes of making findings of fact under subsection (1),
13 the Federal Court of Australia may:
- 14 (a) have regard to the evidence given in the IC review; and
15 (b) receive further evidence.
- 16 (3) Subsection (2) does not limit the Federal Court of Australia's
17 power under subsection 56(6) to make an order remitting the case
18 to be heard and decided again by the Information Commissioner.

19 **Part VIIA—Review by the Tribunal**

20 **Division 1—Guide to this Part**

21 **57 Guide to this Part**

22 An application may be made to the Administrative Appeals
23 Tribunal for the review of certain decisions (see section 57A).

24 Division 3 sets out the powers of the Tribunal in a review.

25 Division 4 deals with the procedure to be followed in a review by
26 the Tribunal.

27 Division 5 deals with ensuring that exempt matter that comes
28 before the Tribunal is protected from disclosure.

29 Division 6 deals with the circumstances in which the Tribunal may
30 make recommendations as to costs.

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Part 1 Main amendments

1 Division 7 deals with the stay of decisions pending appeal to the
2 Federal Court of Australia.

3 **Division 2—Tribunal reviewable decisions**

4 **57A Tribunal reviewable decisions—which decisions are** 5 **reviewable?**

6 An application may be made to the Tribunal for review of the
7 following decisions:

- 8 (a) a decision of the Information Commissioner on an IC review;
9 (b) if the Information Commissioner makes a decision under
10 paragraph 54W(b) (matters inappropriate for IC review)—the
11 IC reviewable decision in relation to which the Information
12 Commissioner makes the decision.

13 Note 1: An application for the review of a decision may be made by a person
14 whose interests are affected by the decision (see section 27 of the
15 *Administrative Appeals Tribunal Act 1975*).

16 Note 2: Subsection 29(2) of the *Administrative Appeals Tribunal Act 1975* sets
17 out the time within which the application for review must be made.

18 **Division 3—Powers of Tribunal**

19 **36 Subsection 58(7)**

20 Repeal the subsection.

21 **37 After section 58**

22 Insert:

23 **58A Powers of Tribunal—requiring further searches**

24 (1) This section applies to a review on an application to the Tribunal
25 under section 57A if:

- 26 (a) access to the document is refused under section 24A
27 (document cannot be found etc.); or
28 (b) access is purportedly given to the document (amongst others
29 to which the request relates), but is not actually given.

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- 1 (2) For the purposes of the review, the Tribunal may require the
2 agency or Minister concerned to conduct further searches for the
3 document.

4 **58AA Powers of Tribunal—limitation on amending records**

- 5 (1) The Tribunal may, in a decision on an application to the Tribunal
6 under section 57A, recommend that an amendment be made to a
7 record that relates to a record of an opinion only if he or she is
8 satisfied of either (or both) of the following:
9 (a) the opinion was based on a mistake of fact;
10 (b) the author of the opinion was biased, unqualified to form the
11 opinion or acted improperly in conducting the factual
12 inquiries that led to the formation of the opinion.
- 13 (2) The Tribunal must not, in a decision on an application under
14 section 57A, recommend that an amendment be made to a record if
15 it is satisfied of either of the following:
16 (a) the record is a record of a decision, under an enactment, by a
17 court, tribunal, authority or person;
18 (b) the decision whether to amend the record involves the
19 determination of a question that the person seeking
20 amendment of the record is, or has been, entitled to have
21 determined by the agency (on internal review), the
22 Information Commissioner, a court or tribunal.

23 **38 Before section 58B**

24 Insert:

25 **Division 4—Procedure in Tribunal**

26 **39 Subsection 58B(1)**

27 Omit “review of a decision”, substitute “review in relation to a
28 decision”.

29 **40 Sections 58F, 59 and 59A**

30 Repeal the sections.

31 **41 Section 60**

32 Repeal the section, substitute:

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Schedule 4 Information Commissioner amendments

Part 1 Main amendments

60 Procedure in Tribunal—parties

- 1
- 2 (1) This section applies for the purposes of this Part and of the
3 application of the *Administrative Appeals Tribunal Act 1975* in
4 relation to proceedings under this Part.
- 5 (2) A decision given by a person on behalf of an agency is taken to
6 have been given by the agency.
- 7 (3) The parties to a proceeding before the Tribunal for a review of a
8 decision are as follows:
- 9 (a) the person who applied to the Tribunal for a review of the
10 decision under section 57A;
- 11 (b) the person who made the request in respect of which the
12 decision was made;
- 13 (c) the principal officer of the agency, or the Minister, to whom
14 the request was made;
- 15 (d) an affected third party for the document in relation to which
16 the decision was made;
- 17 Note: For *affected third party* see section 53C.
- 18 (e) any other person who is made a party to the proceeding by
19 the Tribunal under subsection 30(1A) of the *Administrative*
20 *Appeals Tribunal Act 1975*.

42 Subsection 61(2)

21 Repeal the subsection, substitute:

- 22
- 23 (2) In proceedings under this Part that relate to an access grant
24 decision (see section 53B), the affected third party for the
25 document in relation to which the decision was made has the onus
26 of establishing that:
- 27 (a) a decision refusing the request is justified; or
28 (b) the Tribunal should give a decision adverse to the person
29 who made the request.

30 Note: For *affected third party* see section 53C.

43 Before section 63

31 Insert:
32

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Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 **Division 5—Protection of information in Tribunal**

2 **44 Before section 66**

3 Insert:

4 **Division 6—Recommendations as to costs**

5 **45 Paragraph 66(1)(a)**

6 Repeal the paragraph, substitute:

7 (a) a person applies, under section 57A, to the Tribunal for
8 review of a decision of the Information Commissioner on an
9 IC review; and

10 **46 Subsections 66(1) and (3)**

11 Omit “Attorney-General”, substitute “responsible Minister”.

12 **47 Before section 67**

13 Insert:

14 **Division 7—Automatic stay of certain decisions**

15 **48 Paragraph 67(1)(a)**

16 Omit “under section 55, to the Tribunal for review of a decision”,
17 substitute “under section 57A, to the Tribunal for review in relation to a
18 decision”.

19 **49 Before Part VIII**

20 Insert:

21 **Part VIIB—Investigations and complaints**

22 **Division 1—Guide to this Part**

23 **68 Investigations and complaints—guide**

24

This Part is about investigations by the Information Commissioner 25 and by the Ombudsman.

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Schedule 4 Information Commissioner amendments

Part 1 Main amendments

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Division 2 sets up a system for investigations by the Information Commissioner.

The Information Commissioner may investigate an action taken by an agency in the performance of functions or the exercise of powers under this Act on a complaint from a person, or on the Information Commissioner's initiative.

If a person disputes the merits of an access refusal decision or an access grant decision, this Act provides elsewhere for the review of that decision (see Parts VI, VII and VIIA).

However, this does not prevent a person from making a complaint to the Information Commissioner about the way in which the agency has handled the decision.

The Information Commissioner has powers to obtain documents, to question persons and to enter premises (see Subdivision D).

At the conclusion of the investigation, the Information Commissioner must give a notice to the complainant and to the respondent agency about the Information Commissioner's findings, with any recommendations that the Information Commissioner believes the agency ought to implement (see section 86).

If the Information Commissioner is not satisfied that the agency has taken adequate and appropriate action to implement the recommendations, the Information Commissioner may take further steps (see sections 89, 89A and 89B).

Division 3 deals with the investigation of complaints by the Ombudsman about action taken under this Act.

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Information Commissioner amendments **Schedule 4**
Main amendments **Part 1**

1 **Division 2—Information Commissioner investigations**

2 **Subdivision A—Power to investigate**

3 **69 Information Commissioner investigations—power to investigate**

4 *Obligation to investigate*

- 5 (1) The Information Commissioner must, subject to this Division,
6 investigate a complaint made under section 70.

7 *Discretion to investigate*

- 8 (2) The Information Commissioner may, at the Information
9 Commissioner's initiative, investigate an action taken by an agency
10 (the *respondent agency*) in the performance of functions, or the
11 exercise of powers, under this Act.

12 **Subdivision B—Making complaints**

13 **70 Information Commissioner investigations—making complaints**

- 14 (1) A person (the *complainant*) may complain to the Information
15 Commissioner about an action taken by an agency in the
16 performance of functions, or the exercise of powers, under this
17 Act.

- 18 (2) A complaint must:

- 19 (a) be in writing; and
20 (b) identify the agency (also the *respondent agency*) in respect
21 of which the complaint is made.

- 22 (3) The Office of the Information Commissioner must provide
23 appropriate assistance to a person who:

- 24 (a) wishes to make a complaint; and
25 (b) requires assistance to formulate the complaint.

26 **Subdivision C—Decision to investigate**

27 **71 Information Commissioner investigations—interpretation**

28 This Subdivision applies to a part of a complaint as if:

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- 1 (a) a reference to a complaint were a reference to the part of the
2 complaint; and
3 (b) a reference to an action were a reference to an action to
4 which the part of the complaint relates.

5 **72 Information Commissioner investigations—preliminary inquiries**

6 The Information Commissioner may make inquiries of the
7 respondent agency for the purpose of determining whether or not to
8 investigate a complaint made (or purported to be made) under
9 section 70.

10 **73 Information Commissioner investigations—discretion not to** 11 **investigate**

12 The Information Commissioner may decide not to investigate, or
13 not to continue to investigate, a complaint about an action made
14 under section 70 if the Information Commissioner is satisfied of
15 any of the following:

- 16 (a) that the action is not taken by an agency in the performance
17 of the agency's functions or the exercise of the agency's
18 powers under this Act;
- 19 (b) that:
- 20 (i) the complainant has or had a right to cause the action to
21 be reviewed by the respondent agency, the Information
22 Commissioner, a court or a tribunal; and
23 (ii) the complainant has not exercised, or did not exercise,
24 the right; and
25 (iii) it would be, or would have been, reasonable for the
26 complainant to exercise the right;
- 27 (c) that:
- 28 (i) the complainant has or had a right to complain about the
29 action to another body; and
30 (ii) the complainant has not exercised, or did not exercise
31 the right; and
32 (iii) it would be, or would have been, reasonable for the
33 complainant to exercise the right;
- 34 (d) that the complainant has complained to the respondent
35 agency, and the respondent agency:

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- 1 (i) has dealt, or is dealing, adequately with the complaint;
2 or
3 (ii) has not yet had an adequate opportunity to deal with the
4 complaint;
5 (e) that the complaint is frivolous, vexatious, misconceived,
6 lacking in substance or not made in good faith;
7 (f) that the complainant does not have a sufficient interest in the
8 subject matter of the complaint.

9 Note: The Information Commissioner may make a decision under this
10 section to investigate only part of a complaint (see section 71).

11 **74 Information Commissioner investigations—transfer to** 12 **Ombudsman**

13 *Scope*

- 14 (1) This section applies if the Information Commissioner is satisfied
15 that a complaint about an action could be more effectively or
16 appropriately dealt with by the Ombudsman under the *Ombudsman*
17 *Act 1976*.

18 Example 1: A complaint about the way in which the Information Commissioner
19 has dealt with an IC review.

20 Example 2: A complaint relates to an action under this Act, but is part of a
21 complaint that relates to other matters that can be more appropriately
22 dealt with by the Ombudsman.

23 *Transfer of complaints to Ombudsman*

- 24 (2) The Information Commissioner:
25 (a) must consult the Ombudsman about the complaint with a
26 view to avoiding inquiries being conducted into that matter
27 by both the Information Commissioner and the Ombudsman;
28 and
29 (b) may decide not to investigate the action, or not to continue to
30 investigate the action.
- 31 (3) If the Information Commissioner decides not to investigate, or not
32 to continue to investigate, the action under paragraph (2)(b), the
33 Information Commissioner must:
34 (a) transfer the complaint to the Ombudsman; and

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1 (b) give the Ombudsman any information or documents that
2 relate to the complaint in the possession, or under the control
3 of, the Information Commissioner; and

4 (c) notify the complainant in writing that the complaint has been
5 transferred.

6 (4) A notice under paragraph (3)(c) must state the reasons for the
7 Information Commissioner's decision.

8 (5) A complaint transferred under subsection (3) is taken to be a
9 complaint made to the Ombudsman under the *Ombudsman Act*
10 *1976*.

11 Note: The Information Commissioner may make a decision under this
12 section to investigate only part of a complaint (see section 71).

13 **75 Information Commissioner investigations—notice requirements**

14 *Notice to respondent agency before commencing investigation*

15 (1) Before beginning an investigation, the Information Commissioner
16 must notify the respondent agency in writing.

17 *Notice of decision not to investigate, or not to continue to*
18 *investigate*

19 (2) Subsection (3) applies if the Information Commissioner decides:

20 (a) not to investigate, or not to continue to investigate, a
21 complaint made under section 70; or

22 (b) not to continue an investigation commenced at the
23 Information Commissioner's initiative.

24 (3) The Information Commissioner must, as soon as practicable, notify
25 the complainant (if any) and the respondent agency of the decision
26 in writing.

27 (4) A notice under subsection (3) must state the reasons for the
28 Information Commissioner's decision.

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Information Commissioner amendments **Schedule 4**
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1 **Subdivision D—Investigation procedure**

2 **76 Information Commissioner investigations—conduct of** 3 **investigation**

- 4 (1) An investigation must be conducted in private and in a way the
5 Information Commissioner thinks fit.
- 6 (2) For the purposes of an investigation, the Information
7 Commissioner may obtain information from any officer of an
8 agency, and make any inquiry, that he or she thinks is relevant to
9 the investigation.

10 **77 Information Commissioner investigations—general power to** 11 **enter premises**

12 *Authority to enter premises*

- 13 (1) An authorised person may enter a place that:
14 (a) is occupied by an agency; or
15 (b) is occupied by a contracted service provider and used by the
16 contracted service provider predominantly for the purposes of
17 a Commonwealth contract.
- 18 (2) The authorised person may enter a place only if:
19 (a) consent to the entry has been given by the person (the
20 **consenting person**) who is:
21 (i) in the case of an agency—the principal officer of the
22 agency; or
23 (ii) in the case of a contracted service provider—the person
24 in charge (however described) of the contracted service
25 provider; and
26 (b) before giving the consent, the authorised person informed the
27 consenting person that he or she may refuse consent.
- 28 (3) The authorised person must leave the premises if the consenting
29 person asks the authorised person to do so.
- 30 (4) If the consenting person consents to the entry under
31 paragraph (2)(a), the authorised person may, at any reasonable time
32 of day arranged with the consenting person:
33 (a) enter and remain at the place; or

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- 1 (b) carry on the investigation at that place; or
2 (c) inspect any documents relevant to the investigation kept at
3 the place.

4 (5) This section is subject to section 78.

5 *Who is an authorised person?*

- 6 (6) An *authorised person* is a person who is:
7 (a) an APS employee who holds, or is acting in, an Executive
8 Level 2, or equivalent, position in the Office of the
9 Information Commissioner; and
10 (b) authorised by the Information Commissioner for the purposes
11 of this section.

12 **78 Information Commissioner investigations—places for which** 13 **approval required before entry**

14 *Specific places and areas*

- 15 (1) Subsection (2) applies if an authorised person proposes to enter, or
16 carry on an investigation, at any of the following:
17 (a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;
18 (b) a place that is a prohibited area for the purposes of the
19 *Defence (Special Undertakings) Act 1952* because of
20 section 7 of that Act;
21 (c) an area of land or water or an area of land and water that is
22 declared under section 14 of the *Defence (Special*
23 *Undertakings) Act 1952* to be a restricted area for the
24 purposes of that Act.
- 25 (2) If this subsection applies, the authorised person must not enter, or
26 carry on an investigation, unless:
27 (a) the Minister administering that Act, or another Minister
28 acting for and on behalf of the Minister, has, in writing,
29 approved the entry or carrying on of the investigation; and
30 (b) the authorised person complies with any conditions specified
31 in the approval.

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1

Places in respect of which Attorney-General makes declaration

2

(3) The Attorney-General may, by notice in writing to the Information Commissioner, declare a place to be a prohibited place if the Attorney-General is satisfied that the carrying on of an investigation at the place might prejudice the security or defence of the Commonwealth.

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(4) If a declaration under subsection (3) is in force, an authorised person must not enter, or carry on an investigation at, the prohibited place unless:

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(a) a Minister specified in the declaration, or another Minister acting for and on behalf of the Minister, has, in writing, approved the entry or carrying on of the investigation; and

11

12

13

14

(b) the authorised person complies with any conditions specified in the approval.

15

79 Information Commissioner investigations—obliging production of information and documents

16

17

Scope

18

(1) This section applies if the Information Commissioner has reason to believe that a person has information, or a document, relevant to an investigation under this Part.

19

20

21

(2) This section applies subject to section 81 (production of exempt documents).

22

23

Notice to produce

24

(3) The Information Commissioner may, by written notice, require a person, for the purposes of the investigation:

25

26

(a) to give the Information Commissioner information of the kind referred to in the notice; or

27

28

(b) to produce to the Information Commissioner the document referred to in the notice.

29

30

(4) The notice must:

31

(a) be in writing; and

32

(b) specify the place at which the person must comply with the notice; and

33

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- 1 (c) state that the person must comply with the notice:
2 (i) within a specified period that is not less than 14 days
3 after the day on which the person is given the notice; or
4 (ii) at a specified time that is not less than 14 days after the
5 time at which the person is given the notice.

6 *Offence for failure to comply*

- 7 (5) A person commits an offence if:
8 (a) the person is subject to a requirement specified in a notice
9 under subsection (3); and
10 (b) the person engages in conduct; and
11 (c) the person's conduct breaches the requirement.

12 Penalty for a contravention of this subsection: Imprisonment for 6
13 months.

14 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
15 criminal responsibility.

16 **80 Information Commissioner investigations—dealings with**
17 **documents**

18 *What the Information Commissioner may do with documents*

- 19 (1) The Information Commissioner may do one or more of the
20 following with respect to any documents produced in accordance
21 with a notice under subsection 79(3):
22 (a) take possession of the documents;
23 (b) make copies of the documents;
24 (c) take extracts from the documents;
25 (d) hold the documents for a period that is necessary for the
26 purposes of the investigation.

27 *Information Commissioner must permit access by those entitled*

- 28 (2) During an investigation the Information Commissioner must
29 permit a person to inspect a document that the person would be
30 entitled to inspect if the document were not held by the
31 Information Commissioner.
32 (3) The Information Commissioner must permit the person to inspect
33 the document at any reasonable time.
-

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1 **81 Information Commissioner investigations—exempt documents**

2 Sections 55S and 55T apply to an investigation under this Part as if
3 a reference in those sections to an IC review of a decision were a
4 reference to an investigation of a complaint made under section 70.

5 Note: Sections 55S and 55T deal with access by the Information
6 Commissioner to exempt documents.

7 **82 Information Commissioner investigations—obliging persons to**
8 **appear**

9 *Notice to require person to appear*

10 (1) The Information Commissioner may, by written notice, require a
11 person to appear before the Information Commissioner to answer
12 questions for the purposes of an investigation.

13 (2) The notice must:

14 (a) be in writing; and

15 (b) state that the person must comply with the notice at a
16 specified time that is not less than 14 days after the time at
17 which the person is given the notice; and

18 (c) specify the place at which the person must comply with the
19 notice.

20 *Offence for failure to comply*

21 (3) A person commits an offence if:

22 (a) the person is subject to a requirement specified in a notice
23 under subsection (1); and

24 (b) the person engages in conduct; and

25 (c) the person's conduct breaches the requirement.

26 Penalty for a contravention of this subsection: 6 months
27 imprisonment.

28 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
29 criminal responsibility.

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83 Information Commissioner investigations—administration of oath or affirmation

(1) If, by a notice under subsection 82(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:

- (a) administer an oath or affirmation to the person; and
- (b) examine the 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.

(3) A person commits an offence if:

- (a) the person is required under this section to be examined on oath or affirmation; and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches that requirement.

Penalty for a contravention of this subsection: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

84 Information Commissioner investigations—no loss of legal professional privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is given, provided, produced or referred to for the purposes of this Part.

85 Information Commissioner investigations—protection from liability

(1) This section applies if a person does any of the following for the purposes of an investigation:

- (a) gives information;
- (b) produces a document;
- (c) answers a question.

(2) If this section applies:

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- 1 (a) civil proceedings do not lie against the person in respect of
2 loss, damage or injury of any kind suffered by another person
3 because the person does any of the matters mentioned in
4 paragraphs (1)(a) to (c) in good faith; and
5 (b) the person is not liable to a penalty under the provisions of
6 any law because he or she does any of those matters.
- 7 (3) This section applies whether or not the person is required to do a
8 thing mentioned in subsection (1) in accordance with this Division.

9 **Subdivision E—Outcome of investigation**

10 **86 Information Commissioner investigations—notice on completion**

11 *Requirement to notify respondent agency*

- 12 (1) If the Information Commissioner completes an investigation, the
13 Information Commissioner must, as soon as practicable, notify the
14 respondent agency.
- 15 (2) The notice must state the following:
16 (a) the investigation results (see section 87);
17 (b) the investigation recommendations (if any) (see section 88);
18 (c) the reasons for the investigation results and the making of the
19 investigation recommendations.
- 20 (3) The respondent agency may give to the Information Commissioner
21 any comments about the notice that the agency wishes to make.

22 *Requirement to notify complainant (if any)*

- 23 (4) The Information Commissioner must give a copy (or a copy
24 prepared in accordance with subsection (5)) of the notice to the
25 complainant (if any).
- 26 (5) However, if the copy of the notice would contain matters of the
27 kind mentioned in subsection 89C(2), the Information
28 Commissioner must prepare a copy of the report to give to the
29 complainant that excludes those matters.

30 Note: Section 89D sets out further limitations on recommendations to amend
31 records.

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1 **87 Information Commissioner investigations—what are the**
2 ***investigation results?***

3 The *investigation results*, in relation to the investigation, are the
4 following:

- 5 (a) the matters that the Information Commissioner has
6 investigated;
- 7 (b) any opinions that the Information Commissioner has formed
8 in relation to those matters;
- 9 (c) any conclusions that the Information Commissioner has
10 reached in relation to those matters;
- 11 (d) any suggestions to the respondent agency the implementation
12 of which the Information Commissioner believes might
13 improve the processes of the agency;
- 14 (e) any other information of which the Information
15 Commissioner believes the respondent agency ought to be
16 aware.

17 **88 Information Commissioner investigations—what are the**
18 ***investigation recommendations?***

19 The *investigation recommendations*, in relation to the
20 investigation, are the formal recommendations to the respondent
21 agency that the Information Commissioner believes that the
22 respondent agency ought to implement.

23 **89 Information Commissioner investigations—failure to implement**
24 **investigation recommendation**

25 *Scope*

- 26 (1) This section applies if:
- 27 (a) the Information Commissioner completes an investigation;
28 and
- 29 (b) the Information Commissioner gives an agency a notice
30 under section 86; and
- 31 (c) the Information Commissioner is not satisfied that the agency
32 has taken action that is adequate and appropriate in the
33 circumstances to implement the investigation
34 recommendations for the investigation.

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Giving implementation notices

- 1
- 2 (2) The Information Commissioner may, by notice in writing (an
3 **implementation notice**), require the respondent agency to:
- 4 (a) give to the Information Commissioner particulars of any
5 action that the agency proposes to take to implement the
6 investigation recommendations for the investigation; and
7 (b) give the particulars within the time specified in the notice.
- 8 (3) The respondent agency must comply with the implementation
9 notice.

89A Information Commissioner investigations—failure to take action in response to implementation notice

Scope

- 10
- 11
- 12
- 13 (1) This section applies if:
- 14 (a) the Information Commissioner gives an implementation
15 notice to a respondent agency; and
16 (b) the Information Commissioner is satisfied that:
- 17 (i) the agency has not responded to the implementation
18 notice within the time specified in the notice; or
19 (ii) the agency has not taken action that is adequate and
20 appropriate in the circumstances to implement the
21 investigation recommendations for the investigation.

Report to responsible Minister

- 22
- 23 (2) The Information Commissioner may give a written report to the
24 responsible Minister that contains the matters set out in
25 section 89B.

26 Note: For **responsible Minister**, see subsection 4(1).

Report to Minister

- 27
- 28 (3) If the Information Commissioner gives a report to the responsible
29 Minister under subsection (2), the Information Commissioner must
30 give a copy (or a copy prepared in accordance with subsection (4))
31 of the report to the Minister (the **FOI Minister**) responsible for the
32 administration of this Act.

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1 (4) However, if the copy of the report would contain matters of the
2 kind mentioned in subsection 89C(2), the Information
3 Commissioner must prepare a copy of the report to give to the FOI
4 Minister that excludes those matters.

5 (5) The FOI Minister must cause the copy of the report to be laid
6 before each House of the Parliament.

7 Note: Section 89D sets out further limitations on recommendations to amend
8 records.

9 **89B Information Commissioner investigations—requirements for** 10 **report**

11 A report under subsection 89A(2) must:

- 12 (a) include a copy of the notice given to the respondent agency
13 under subsection 86(2) (notice on completion) and the
14 implementation notice; and
15 (b) give details of the respondent agency's response (if any) to
16 the implementation notice; and
17 (c) state that the Information Commissioner is not satisfied that
18 the agency has taken action that is adequate and appropriate
19 in the circumstances to implement the investigation
20 recommendations for the investigation; and
21 (d) state the action that the Information Commissioner believes,
22 if taken by the agency, would be adequate and appropriate in
23 the circumstances to implement the investigation
24 recommendations for the investigation.

25 **89C Information Commissioner investigations—ensuring** 26 **non-disclosure of certain matters**

27 (1) This section applies to the following documents:

- 28 (a) a notice to a complainant under section 86 (notice on
29 completion);
30 (b) a report to the FOI Minister under subsection 89A(3) (failure
31 to take action).

32 (2) The Information Commissioner must not include in the document:

- 33 (a) exempt matter; or
34 (b) information of the kind referred to in subsection 25(1).

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1 Note: Subsection 25(1) deals with information about the existence or
2 otherwise of certain documents.

3 **89D Information Commissioner investigations—limitation on** 4 **amending records**

5 *Scope*

- 6 (1) This section applies to the following documents:
7 (a) a notice to a complainant under section 86 (notice on
8 completion);
9 (b) a report to the FOI Minister under subsection 89A(3) (failure
10 to take action).

11 *Restrictions on amendments*

- 12 (2) The Information Commissioner may, in the document, recommend
13 that an amendment be made to a record that relates to a record of
14 an opinion only if he or she is satisfied of either (or both) of the
15 following:
16 (a) the opinion was based on a mistake of fact;
17 (b) the author of the opinion was biased, unqualified to form the
18 opinion or acted improperly in conducting the factual
19 inquiries that led to the formation of the opinion.
- 20 (3) The Information Commissioner must not, in the document,
21 recommend that an amendment be made to a record if he or she is
22 satisfied of either of the following:
23 (a) the record is a record of a decision, under an enactment, by a
24 court, tribunal, authority or person;
25 (b) the decision whether to amend the record involves the
26 determination of a question that the person seeking
27 amendment of the record is, or has been, entitled to have
28 determined by the agency (on internal review), the
29 Information Commissioner, a court or tribunal.

30 **89E Information Commissioner investigations—protection from** 31 **civil action**

- 32 (1) Civil proceedings do not lie against a person in respect of loss,
33 damage or injury of any kind suffered by another person because

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1 the first-mentioned person complains about an action under
2 section 70.

3 (2) Subsection (1) only applies if the complaint is made in good faith.

4 **Division 3—Complaints to Ombudsman**

5 **89F Complaints to Ombudsman—powers not affected**

6 This Part does not prevent the Ombudsman from exercising powers
7 or performing functions under the *Ombudsman Act 1976* in
8 accordance with that Act.

9 **89G Complaints to Ombudsman—report must not contain certain** 10 **information**

11 A report under subsection 12(3) or section 15 or 17 of the
12 *Ombudsman Act 1976* in relation to an action taken under this Act
13 must not include:

- 14 (a) exempt matter; or
15 (b) information of the kind referred to in subsection 25(1).

16 Note: Subsection 25(1) deals with information about the existence or
17 otherwise of certain documents.

18 **89H Complaints to Ombudsman—certain rights not affected by** 19 **certificates**

- 20 (1) This section applies if:
21 (a) the Ombudsman has commenced an investigation of a
22 decision made under this Act not to grant a request for access
23 to a document; and
24 (b) the Attorney-General furnishes a certificate to the
25 Ombudsman under paragraph 9(3)(a), (c) or (d) of the
26 *Ombudsman Act 1976* in relation to that investigation.
- 27 (2) The certificate does not affect the Ombudsman's right to:
28 (a) seek from any person the reasons for a decision made under
29 this Act not to give access to an exempt document; or
30 (b) require any person to give any information or to answer any
31 questions concerning the decision.

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Main amendments **Part 1**

1 **89J Complaints to Ombudsman—limitation on amending records in** 2 **reports under the *Ombudsman Act 1976***

3 (1) The Ombudsman may, in a report under section 15 of the
4 *Ombudsman Act 1976*, recommend that an amendment be made to
5 a record that relates to a record of an opinion only if he or she is
6 satisfied of either (or both) of the following:

- 7 (a) the opinion was based on a mistake of fact;
8 (b) the author of the opinion was biased, unqualified to form the
9 opinion or acted improperly in conducting the factual
10 inquiries that led to the formation of the opinion.

11 (2) The Ombudsman must not, in a report under section 15 of the
12 *Ombudsman Act 1976*, recommend that an amendment be made to
13 a record if he or she is satisfied of either of the following:

- 14 (a) the record is a record of a decision, under an enactment, by a
15 court, tribunal, authority or person;
16 (b) the decision whether to amend the record involves
17 determination of a question that the person seeking
18 amendment of the record is, or has been, entitled to have
19 determined by the agency (on internal review), the
20 Information Commissioner, a court or tribunal.

21 **50 Before section 91**

22 Insert:

23 **Division 1—Vexatious applicants**

24 **89K Vexatious applicants—declaration**

25 (1) The Information Commissioner may, by written instrument (a
26 *vexatious applicant declaration*), declare a person to be a
27 vexatious applicant.

28 Note 1: Section 89L sets out the grounds on which a declaration may be made.

29 Note 2: For variation and revocation of the instrument, see subsection 33(3) of
30 the *Acts Interpretation Act 1901*.

31 (2) The Information Commissioner may make a declaration:

- 32 (a) on the application of an agency or Minister; or
33 (b) on the Information Commissioner's initiative.

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- 1 (3) If an agency or Minister has applied for a declaration, the agency
2 or Minister has the onus of establishing that the Information
3 Commissioner should make the declaration.

4 **89L Vexatious applicants—grounds for declaration**

- 5 (1) The Information Commissioner may make a vexatious applicant
6 declaration in relation to a person only if the Information
7 Commissioner is satisfied of any of the following:
8 (a) that:
9 (i) the person has repeatedly engaged in access actions; and
10 (ii) the repeated engagement involves an abuse of the
11 process for the access action;
12 (b) a particular access action in which the person engages
13 involves, or would involve, an abuse of the process for that
14 access action;
15 (c) a particular access action in which the person engages would
16 be manifestly unreasonable.
- 17 (2) A person engages in an *access action* if the person does any of the
18 following:
19 (a) makes a request;
20 (b) makes an application under section 48;
21 (c) makes an application for internal review;
22 (d) makes an IC review application.
- 23 (3) The Information Commissioner must not make a declaration in
24 relation to a person without giving the person an opportunity to
25 make written or oral submissions.
- 26 (4) In this section:
27 *abuse of the process for an access action* includes, but is not
28 limited to, the following:
29 (a) harassing or intimidating an individual or an employee of an
30 agency;
31 (b) unreasonably interfering with the operations of an agency;
32 (c) seeking to use the Act for the purpose of circumventing
33 restrictions on access to a document (or documents) imposed
34 by a court.

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1 **89M Vexatious applicants—effect of declaration**

- 2 (1) A vexatious applicant declaration has effect in accordance with the
3 terms and conditions stated in the declaration.
- 4 (2) Without limiting subsection (1), a vexatious applicant declaration
5 in relation to a person may provide that:
6 (a) an agency or Minister may refuse to consider any of the
7 following if made by the person without the written
8 permission of the Information Commissioner:
9 (i) a request;
10 (ii) an application under section 48 (amendment of records);
11 (iii) an application for internal review; and
12 (b) the Information Commissioner may refuse to consider an IC
13 review application made by the person.
- 14 (3) If a decision is made as mentioned in subsection (2), the agency,
15 Minister or the Information Commissioner (as the case requires)
16 must, as soon as practicable, notify the vexatious applicant of the
17 decision.

18 **89N Vexatious applicants—review by Tribunal**

19 An application may be made to the Tribunal for a review of a
20 decision under section 89K of the Information Commissioner to
21 make a vexatious applicant declaration.

22 **Division 2—General**

23 **89P Miscellaneous—staff to hold appropriate security clearance**

24 The Information Commissioner must take all reasonable steps to
25 ensure that a member of the staff of the Office of the Information
26 Commissioner who performs functions or exercises powers for the
27 purposes of this Act is given a security clearance at an appropriate
28 level.

29 Note: Security clearances are given in accordance with the Australian
30 Government Protective Security Manual.

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1 **90 Protection against civil liability—general**

2 (1) No action for defamation, breach of confidence or infringement of
3 copyright lies against the Commonwealth, a Minister, an agency or
4 an officer of an agency because the Minister, or an officer of the
5 agency:

6 (a) publishes a document in good faith, in the belief that the
7 publication is required or permitted under Part II
8 (information publication scheme) or section 11C (publication
9 of information in accessed documents); or

10 (b) gives access to a document in good faith, in the belief that the
11 access is required or permitted to be given in response to a
12 request; or

13 (c) publishes, or gives access to, a document in good faith, in the
14 belief that the publication or access is required or permitted
15 otherwise than under this Act (whether or not under an
16 express legislative power).

17 (2) No action for defamation, or breach of confidence, in respect of the
18 publication of a document covered by subsection (3), lies against a
19 person (including the author of the document) because the person
20 supplied the document to a Minister or an agency.

21 (3) The publication of a document is covered by this subsection if:

22 (a) it is published as mentioned in paragraph (1)(a) or (c); or

23 (b) its publication is involved in, or results from, the giving of
24 access to the document (or another document) as mentioned
25 in paragraph (1)(b) or (c).

26 **51 Subsection 91(1)**

27 Repeal the subsection.

28 Note: The heading to section 91 is replaced by the heading “**Protection against civil**
29 **liability—particular situations**”.

30 **52 Subsection 91(1A)**

31 Omit “Subsection (1)”, substitute “Section 90”.

32 **53 Subsection 91(1C)**

33 Omit “, organisation or proprietor” (first occurring), substitute “or
34 organisation”.

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1 **54 Paragraph 91(1C)(a)**

2 Omit “26A(1)”, substitute “26A(2)”.

3 **55 Paragraph 91(1C)(b)**

4 Repeal the paragraph, substitute:

5 (b) enabling the person or organisation to make a submission
6 under subsection 27(4);

7 **56 Paragraph 91(1C)(c)**

8 Omit “27A(1)”, substitute “27A(3)”.

9 **57 Section 92**

10 Repeal the section, substitute:

11 **92 Protection against criminal liability**

12 (1) A Minister, or an officer of an agency, is not guilty of a criminal
13 offence only because the Minister or officer:

14 (a) publishes a document in good faith, in the belief that the
15 publication is required or permitted under Part II
16 (information publication scheme) or section 11C (publication
17 of information in accessed documents); or

18 (b) gives access to a document in good faith, in the belief that the
19 access is required or permitted to be given in response to a
20 request; or

21 (c) publishes, or gives access to, a document in good faith, in the
22 belief that the publication or access is required or permitted
23 otherwise than under this Act (whether or not under an
24 express legislative power).

25 (2) A person is not guilty of a criminal offence only because the
26 person shows a document, or is concerned in the showing of a
27 document, to another person or organisation for any of the
28 following purposes:

29 (a) consultation with a State under subsection 26A(2);

30 (b) enabling the other person or the organisation to make a
31 submission under subsection 27(4);

32 (c) enabling the other person to make a submission under
33 subsection 27A(3).

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1 **58 Section 93**

2 Repeal the section, substitute:

3 **93 Agencies to provide information to Information Commissioner**

4 (1) This section applies to:

- 5 (a) an agency, in relation to documents of the agency; and
6 (b) each Minister, in relation to his or her official documents.

7 (2) The agency or Minister must give to the Information
8 Commissioner the information that the Information Commissioner
9 requires to prepare reports under section 33 of the *Information*
10 *Commissioner Act 2009*.

11 (3) The agency or Minister must comply with any requirements
12 prescribed by the regulations regarding:

- 13 (a) the giving of the information; and
14 (b) the keeping of records for the purposes of this section.

15 **93A Guidelines**

16 (1) The Information Commissioner may, by instrument in writing,
17 issue guidelines for the purposes of this Act.

18 Note: For variation and revocation of the instrument, see subsection 33(3) of
19 the *Acts Interpretation Act 1901*.

20 (2) For the purposes of the performance of a function, or the exercise
21 of a power, under this Act, regard must be had to any guidelines
22 issued by the Information Commissioner under this section
23 including, but not limited to, guidelines issued for the purposes of
24 the following provisions:

- 25 (a) paragraph 9A(b) (information publication scheme);
26 (b) subsection 11B(5) (public interest factors);
27 (c) subsection 15(5A) (decisions on requests).

28 (3) Guidelines are not legislative instruments.
29

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1

2 **Part 2—Other amendments**

3 *Ombudsman Act 1976*

4 **59 Subsection 3(1)**

5 Insert:

6 *Information Commissioner* has the meaning given by the
7 *Information Commissioner Act 2009*.

8 **60 Subsections 6(4A) to (4C)**

9 Repeal the subsections.

10 **61 After section 6B**

11 Insert:

12 **6C Transfer of complaints to Information Commissioner**

13 *Scope*

14 (1) This section applies if the Ombudsman is satisfied of either of the
15 following:

16 (a) that:

17 (i) a complainant has complained, or could complain, to the
18 Information Commissioner about an action taken by a
19 Department or prescribed authority under Part V of the
20 *Privacy Act 1988* or Part VIIB of the *Freedom of*
21 *Information Act 1982*; and

22 (ii) the action could be more appropriately or effectively
23 dealt with by the Information Commissioner;

24 (b) a complaint about an action taken by a Department or
25 prescribed authority has been the subject of a completed
26 investigation by the Information Commissioner under Part V
27 of the *Privacy Act 1988* or Part VIIB of the *Freedom of*
28 *Information Act 1982*.

29 *Requirement to consult with Information Commissioner*

30 (2) The Ombudsman:

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Schedule 4 Information Commissioner amendments

Part 2 Other amendments

- 1 (a) must consult the Information Commissioner about the
2 complaint with a view to avoid inquiries being conducted
3 into that matter by both the Information Commissioner and
4 the Ombudsman; and
5 (b) may decide not to investigate the action, or not to continue to
6 investigate the action.

7 *Transfer to Information Commissioner*

- 8 (3) If the Ombudsman decides not to investigate, or not to continue to
9 investigate, an action under paragraph (2)(b), the Ombudsman
10 must:
11 (a) transfer the complaint to the Information Commissioner; and
12 (b) notify the complainant in writing that the complaint has been
13 transferred; and
14 (c) give the Information Commissioner any information or
15 documents that relate to the complaint in the possession, or
16 under the control of, the Ombudsman.
17 (4) A complaint transferred under subsection (3) is taken to be a
18 complaint made to the Information Commissioner under Part V of
19 the *Privacy Act 1988* or Part VIIB of the *Freedom of Information*
20 *Act 1982*, as the case requires.

21 **62 Subsection 19(4)**

22 Omit “paragraph (1)(a) or under subsection (2)”, substitute
23 “subsection (1) or (2)”.

24 **63 Subparagraph 19R(3)(b)(iii)**

25 Omit “(4A)”, substitute “(4D)”.

26 **64 Subsection 19R(4) (table item 4, column 2)**

27 Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

28 **65 Subsection 35(6A)**

29 Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

30

EXPOSURE DRAFT

Information Commissioner amendments **Schedule 4**
Application and transitional provisions **Part 3**

1

2 **Part 3—Application and transitional provisions**

3 **66 Application—Part 1**

4 *Internal review and IC review*

- 5 (1) The amendments made by Part 1 (other than the amendments covered
6 by subitems (2), (3) and (4)) apply in relation to requests for access
7 made under section 15 of the *Freedom of Information 1982* on or after
8 the commencement of those items.

9 *Tribunal review*

- 10 (2) The amendments made by items 44 and 46 apply in relation to
11 applications to the Tribunal under section 55 of the *Freedom of*
12 *Information Act 1982* made on or after the commencement of those
13 items.

14 *Investigation by the Information Commissioner*

- 15 (3) The amendments made by item 49 to insert new Part VIIB of the
16 *Freedom of Information Act 1982* apply in relation to action taken by an
17 agency (within the meaning of the *Freedom of Information Act 1982*, as
18 amended by this Schedule) before, on or after the commencement of
19 those amendments.

20 *Indemnity amendments*

- 21 (4) The following amendments apply in relation to the publication of, or the
22 giving of access to, a document on or after the commencement of those
23 items:
24 (a) the amendment made by item 50 to insert new section 90 of
25 the *Freedom of Information Act 1982*;
26 (b) the amendments made by items 51, 52 and 57.

27 **67 Application—Part 2**

28 The amendments made by Part 2 apply in relation to a complaint made
29 to the Ombudsman under the *Ombudsman Act 1976* on or after the
30 commencement of those amendments (whether or not the action to
31 which the complaint relates was taken before, on or after that
32 commencement).

EXPOSURE DRAFT

Schedule 4 Information Commissioner amendments

Part 3 Application and transitional provisions

1 **68 Savings—complaints on foot continue under old law**

2 (1) This item applies if:

3 (a) before the commencement of Part 2, a complaint is made to
4 the Ombudsman under the *Ombudsman Act 1976*; and

5 (b) at the commencement time, the Ombudsman has not
6 informed the complainant of the result of the complaint under
7 section 12 of that Act.

8 (2) Despite the amendments made to the *Ombudsman Act 1976* by Part 2,
9 the Ombudsman must continue to deal with the complaint under the
10 *Ombudsman Act 1976* as if those amendments had not been made.
11

EXPOSURE DRAFT

Amendments consequential on the establishment of the Office of the Information
Commissioner **Schedule 5**

1
2
3
4
5

Schedule 5—Amendments consequential on the establishment of the Office of the Information Commissioner

6 *[Drafting note: This Schedule will include consequential amendments to*
7 *Acts that are needed as result of the establishment of the Office of the*
8 *Information Commissioner.]*
9

EXPOSURE DRAFT

Schedule 6 Other amendments

Part 1 Amendments

1

2

Schedule 6—Other amendments

3

Part 1—Amendments

4

Freedom of Information Act 1982

5

1 Subsection 4(1) (definition of *agency*)

6

Omit “, a prescribed authority or an eligible case manager”, substitute
7 “or a prescribed authority”.

8

2 Subsection 4(1)

9

Insert:

10

Commonwealth contract means a contract, to which the
11 Commonwealth or an agency is or was a party, under which
12 services are to be, or were to be, provided to an agency.

13

3 Subsection 4(1)

14

Insert:

15

contracted service provider, for a Commonwealth contract, means
16 an entity that is or was:

17

(a) a party to the Commonwealth contract; and

18

(b) responsible for the provision of services to an agency under
19 the Commonwealth contract.

20

4 Subsection 4(1) (definition of *Department*)

21

Omit all the words after “Commonwealth”.

22

5 Subsection 4(1) (paragraph (d) of the definition of *document*)

23

Repeal the paragraph, substitute:

24

25

(d) material maintained for reference purposes that is otherwise
26 publicly available; or

27

6 Subsection 4(1) (definition of *document of an agency*)

28

Repeal the definition, substitute:

EXPOSURE DRAFT

Other amendments **Schedule 6**
Amendments **Part 1**

- 1 *document of an agency*: a document is *a document of an agency*
2 if:
3 (a) the document is in the possession of the agency, whether
4 created in the agency or received in the agency; or
5 (b) in order to comply with section 6C, the agency has taken
6 contractual measures to ensure that it receives the document.

7 **7 Subsection 4(1)**

8 Insert:

9 *electronic communication* has the same meaning as in the
10 *Electronic Transactions Act 1999*.

11 **8 Subsection 4(1) (definition of *eligible case manager*)**

12 Repeal the definition.

13 **9 Subsection 4(1)**

14 Insert:

15 *intelligence agency document* has the meaning given by paragraph
16 7(2A)(a).

17 **10 Subsection 4(1) (paragraphs (b) and (c) of the definition of** 18 ***principal officer*)**

19 Repeal the paragraphs, substitute:

- 20 (b) in relation to a prescribed authority—whichever of the
21 following applies:
22 (i) if the authority is constituted by one person—that
23 person;
24 (ii) if the authority is constituted by 2 or more persons—the
25 person who is entitled to preside at any meeting of the
26 authority at which he or she is present;
27 (iii) if the authority is an Agency (within the meaning of the
28 *Public Service Act 1999*) other than a Department—the
29 Agency Head (within the meaning of the *Public Service*
30 *Act 1999*) of the authority;
31 (iv) if the regulations declare an office to be the principal
32 office of the authority—the person holding, or
33 performing the duties of, that office;

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Schedule 6 Other amendments

Part 1 Amendments

1 (v) in any other case—the person responsible for the
2 day-to-day management of the authority.

3 **11 Subsection 4(1)**

4 Insert:

5 *practical refusal reason* has the meaning given by section 24AA.

6 **12 Subsection 4(1)**

7 Insert:

8 *provided*: services *provided* to an agency includes services that
9 consist of the provision of services to other persons in connection
10 with the performance of the functions, or the exercise of the
11 powers, of the agency.

12 **13 Subsection 4(1)**

13 Insert:

14 *request consultation process* has the meaning given by
15 section 24AB.

16 **14 Subsection 4(1) (paragraph (d) of the definition of** 17 ***responsible Minister*)**

18 Omit “or”.

19 **15 Subsection 4(1) (paragraph (e) of the definition of** 20 ***responsible Minister*)**

21 Repeal the paragraph.

22 **16 Subsection 4(1)**

23 Insert:

24 *subcontractor*, for a Commonwealth contract, means an entity:

- 25 (a) that is or was a party to a contract (the *subcontract*):
- 26 (i) with a contracted service provider for the
27 Commonwealth contract; or
- 28 (ii) with another subcontractor for the Commonwealth
29 contract (under a previous application of this
30 definition); and

EXPOSURE DRAFT

Other amendments **Schedule 6**
Amendments **Part 1**

- 1 (b) that is, or was, responsible under the subcontract for the
2 provision of services for the purposes (whether direct or
3 indirect) of the Commonwealth contract to either of the
4 following:
5 (i) an agency;
6 (ii) a contracted service provider for the Commonwealth
7 contract.

8 **17 Subsection 4(8)**

9 Repeal the subsection.

10 **18 Section 6B**

11 Repeal the section.

12 **19 Before section 7**

13 Insert:

14 **6C Requirement for Commonwealth contracts**

15 (1) This section applies to a Commonwealth contract for the provision
16 of services to an agency.

17 (2) The agency must take contractual measures to ensure that the
18 agency receives a document if:

19 (a) the document is created by, or is in the possession of:

20 (i) a contracted service provider for the Commonwealth
21 contract; or

22 (ii) a subcontractor for the Commonwealth contract; and

23 (b) the document is covered by subsection (3).

24 (3) This subsection covers the following documents:

25 (a) a document that an agency is required to publish under Part II
26 (information publication scheme);

27 (b) a document that relates to the entry by the agency and the
28 contracted service provider into the Commonwealth contract;

29 (c) a document that the agency would have in its possession if
30 the agency were to perform the services in its own right.

31 **20 Subsection 7(2A)**

32 Repeal the subsection, substitute:

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Schedule 6 Other amendments

Part 1 Amendments

1 (2A) An agency is exempt from the operation of this Act in relation to
2 the following documents:

3 (a) a document (an *intelligence agency document*) that has
4 originated with, or has been received from, any of the
5 following:

- 6 (i) the Australian Secret Intelligence Service;
7 (ii) the Australian Security Intelligence Organisation;
8 (iii) the Inspector-General of Intelligence and Security;
9 (iv) the Office of National Assessments;
10 (v) the Defence Imagery and Geospatial Organisation;
11 (vi) the Defence Intelligence Organisation;
12 (vii) the Defence Signals Directorate;

13 (b) a document that contains a summary of, or an extract or
14 information from, an intelligence agency document, to the
15 extent that it contains such a summary, extract or
16 information.

17 **21 Subsection 7(2B)**

18 Repeal the subsection, substitute:

19 (2B) A Minister is exempt from the operation of this Act in relation to
20 the following documents:

- 21 (a) an intelligence agency document;
22 (b) a document that contains a summary of, or an extract or
23 information from, an intelligence agency document, to the
24 extent that it contains such a summary, extract or
25 information.

26 **22 Paragraphs 15(2)(c) to (e)**

27 Repeal the paragraphs, substitute:

- 28 (c) give details of how notices under this Act may be sent to the
29 applicant (for example, by providing an electronic address to
30 which notices may be sent by electronic communication).

31 Note 1: The following heading to subsection 15(1) is inserted "*Persons may request access*".

32 Note 2: The following heading to subsection 15(2) is inserted "*Requirements for request*".

33 **23 After subsection 15(2)**

34 Insert:

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Other amendments **Schedule 6**
Amendments **Part 1**

- 1 (2A) The request must be sent to the agency or Minister. The request
2 may be sent in any of the following ways:
3 (a) delivery to an officer of the agency, or a member of the staff
4 of the Minister, at the address of any central or regional
5 office of the agency or Minister specified in a current
6 telephone directory;
7 (b) postage by pre-paid post to an address mentioned in
8 paragraph (a);
9 (c) sending by electronic communication to an electronic address
10 specified by the agency or Minister.

11 **24 At the end of subsection 15(3)**

12 Add:

13 Note: If the agency is satisfied that a practical refusal reason exists in
14 relation to the request, the agency or Minister must undertake a
15 request consultation process (under section 24AB). The agency or
16 Minister may refuse to deal with the request if satisfied that the
17 practical refusal reason still exists after undertaking the request
18 consultation process (see section 24).

19 Note 1: The following heading to subsection 15(3) is inserted “*Agency required to assist*”.

20 Note 2: The following heading to subsection 15(5) is inserted “*Timeframes for dealing with*
21 *request*”.

22 **25 After subsection 15(5)**

23 Insert:

24 (5A) In making a decision on a request, the agency or Minister must
25 have regard to any guidelines issued by the Information
26 Commissioner for the purposes of section 93A.

27 **26 Paragraph 15(6)(a)**

28 Omit “to be taken to be”.

29 Note: The following heading to subsection 15(6) is inserted “*Extension of processing period*
30 *to comply with requirements of section 26A, 27 or 27A*”.

31 **27 At the end of section 15**

32 Add:

EXPOSURE DRAFT

Schedule 6 Other amendments

Part 1 Amendments

1

Extension of processing period to consult foreign entity

2

- (7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:

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- (a) consult one of the following:

(i) a foreign government;

(ii) an authority of a foreign government;

(iii) an international organisation; and

- (b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(1)(a)(iii) or paragraph 33(1)(b).

13

14

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17

- (8) If this subsection applies:

- (a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and

- (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

18

28 After section 15

19

Insert:

20

15AA Extension of time for complex or voluminous requests

21

22

23

24

25

- (1) An agency or Minister may apply to the Information Commissioner for an extension of the period referred to in paragraph 15(5)(b) for dealing with a request if the agency or Minister considers that the period is insufficient to deal adequately with a request because the request is complex or voluminous.

26

27

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- (2) If the Information Commissioner is satisfied that the application is justified, the Information Commissioner may, by written instrument, extend the period by a further period of 30 days or such other period as the Information Commissioner considers appropriate.

31

32

Note: For variation and revocation of the instrument, see subsection 33(3) of the *Acts Interpretation Act 1901*.

33

34

35

- (3) The Information Commissioner must, as soon as practicable, inform the following persons of the period for which the extension has been given:
-

EXPOSURE DRAFT

Other amendments **Schedule 6**
Amendments **Part 1**

- 1 (a) the applicant;
2 (b) the agency or Minister.

3 **29 Paragraph 17(1)(a)**

4 Omit “of the kind described in subsection 24(1)”, substitute “in relation
5 to which a practical refusal reason exists”.

6 **30 Section 24**

7 Repeal the section, substitute:

8 **24 Power to refuse request—diversion of resources etc.**

- 9 (1) If an agency or Minister is satisfied, when dealing with a request,
10 that a practical refusal reason (see section 24AA) exists in relation
11 to the request, the agency or Minister:
12 (a) must undertake a request consultation process (see
13 section 24AB); and
14 (b) if, after the request consultation process, the agency or
15 Minister is satisfied that the practical refusal reason still
16 exists—the agency or Minister may refuse to deal with the
17 request.
- 18 (2) For the purposes of this section, the agency or Minister may treat 2
19 or more requests as a single request if the agency or Minister is
20 satisfied that the requests relate to the same document or
21 documents.

22 **24AA When does a *practical refusal reason* exist?**

- 23 (1) For the purposes of section 24, a *practical refusal reason* exists in
24 relation to a request if either (or both) of the following applies:
25 (a) the work involved in processing the request:
26 (i) in the case of an agency—would substantially and
27 unreasonably divert the resources of the agency from its
28 other operations; or
29 (ii) in the case of a Minister—would substantially and
30 unreasonably interfere with the performance of the
31 Minister’s functions;
32 (b) the request does not satisfy the requirement in paragraph
33 15(2)(b) (identification of documents).

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Schedule 6 Other amendments

Part 1 Amendments

- 1 (2) Subject to subsection (3), but without limiting the matters to which
2 the agency or Minister may have regard, in deciding whether a
3 practical refusal reason exists, the agency or Minister must have
4 regard to the resources that would have to be used for the
5 following:
- 6 (a) identifying, locating or collating the documents within the
7 filing system of the agency, or the office of the Minister;
 - 8 (b) deciding whether to grant, refuse or defer access to
9 documents to which the request relates, or to grant access to
10 edited copies of such documents, including resources that
11 would have to be used for:
 - 12 (i) examining the document; or
 - 13 (ii) consulting with any person or body in relation to the
14 request;
 - 15 (c) making a copy, or an edited copy, of the document;
 - 16 (d) notifying any interim or final decision on the request.
- 17 (3) In deciding whether a practical refusal reason exists, an agency or
18 Minister must not have regard to:
- 19 (a) any reasons that the applicant gives for requesting access; or
 - 20 (b) the agency's or Minister's belief as to what the applicant's
21 reasons are for requesting access; or
 - 22 (c) any maximum amount, specified in the regulations, payable
23 as a charge for processing a request of that kind.

24 **24AB What is a *request consultation process*?**

25 *Scope*

- 26 (1) This section sets out what is a *request consultation process* for the
27 purposes of section 24.

28 *Requirement to notify*

- 29 (2) The agency or Minister must give the applicant a written notice
30 stating the following:
- 31 (a) an intention to refuse access to a document in accordance
32 with a request;
 - 33 (b) the practical refusal reason;

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Other amendments **Schedule 6**
Amendments **Part 1**

- 1 (c) the name of an officer of the agency or member of staff of the
2 Minister (the *contact person*) with whom the applicant may
3 consult during a period;
4 (d) details of how the applicant may contact the contact person;
5 (e) that the period (the *consultation period*) during which the
6 applicant may consult with the contact person is 14 days after
7 the day the applicant is given the notice.

8 *Assistance to revise request*

- 9 (3) If the applicant contacts the contact person during the consultation
10 period in accordance with the notice, the agency or Minister must
11 take reasonable steps to assist the applicant to revise the request so
12 that the practical refusal reason no longer exists.
- 13 (4) For the purposes of subsection (3), *reasonable steps* includes the
14 following:
15 (a) giving the applicant a reasonable opportunity to consult with
16 the contact person;
17 (b) providing the applicant with any information that would
18 assist the applicant to revise the request.

19 *Extension of consultation period*

- 20 (5) The contact person may, with the applicant's agreement, extend the
21 consultation period by written notice to the applicant.

22 *Outcome of request consultation process*

- 23 (6) The applicant must, before the end of the consultation period, do
24 one of the following, by written notice to the agency or Minister:
25 (a) withdraw the request;
26 (b) make a revised request;
27 (c) indicate that the applicant does not wish to revise the request.
- 28 (7) The request is taken to have been withdrawn under subsection (6)
29 at the end of the consultation period if:
30 (a) the applicant does not consult the contact person during the
31 consultation period in accordance with the notice; or
32 (b) the applicant does not do one of the things mentioned in
33 subsection (6) before the end of the consultation period.

EXPOSURE DRAFT

Schedule 6 Other amendments

Part 1 Amendments

1 *Consultation period to be disregarded in calculating processing*
2 *period*

3 (8) The period starting on the day an applicant is given a notice under
4 subsection (2) and ending on the day the applicant does one of the
5 things mentioned in paragraph (6)(b) or (c) is to be disregarded in
6 working out the 30 day period mentioned in paragraph 15(5)(b).

7 Note: Paragraph 15(5)(b) requires that an agency or Minister take all
8 reasonable steps to notify an applicant of a decision on the applicant's
9 request within 30 days after the request is made.

10 *No more than one request consultation process required*

11 (9) To avoid doubt, this section only obliges the agency or Minister to
12 undertake a request consultation process once for any particular
13 request.

14 **31 Section 24A**

15 Repeal the section, substitute:

16 **24A Requests may be refused if documents cannot be found, do not** 17 **exist or have not been received**

18 *Document lost or non-existent*

19 (1) An agency or Minister may refuse a request for access to a
20 document if:
21 (a) all reasonable steps have been taken to find the document;
22 and
23 (b) the agency or Minister is satisfied that the document:
24 (i) is in the agency's or Minister's possession but cannot be
25 found; or
26 (ii) does not exist.

27 *Document not received as required by contract*

28 (2) An agency may refuse a request for access to a document if:
29 (a) in order to comply with section 6C, the agency has taken
30 contractual measures to ensure that it receives the document;
31 and
32 (b) the agency has not received the document; and

EXPOSURE DRAFT

Other amendments **Schedule 6**
Amendments **Part 1**

1 (c) the agency has taken all reasonable steps to receive the
2 document in accordance with those contractual measures.

3 **32 Subsection 29(1)**

4 Omit “(not being an application fee)”.

5 **33 Section 30A**

6 Repeal the section.

7 **34 Subsection 31(1)**

8 After “15(6)”, insert “or (8)”.

9 **35 Section 92A**

10 Repeal the section.

11 **36 Division 1 of Part II of Schedule 2 (after the item relating to**
12 **the Commonwealth Scientific and Industrial Research**
13 **Organisation)**

14 Insert:

Department of Defence, in relation to documents in respect of:

- (a) the collection, reporting or analysis of operational intelligence; or
- (b) special access programs, under which a foreign government provides restricted access to technologies.

15 **37 Division 1 of Part II of Schedule 2 (the item relating to the**
16 **Federal Airports Corporation)**

17 Repeal the item.
18

EXPOSURE DRAFT

Schedule 6 Other amendments

Part 2 Application provisions

1

2 **Part 2—Application provisions**

3 **38 Application—items 2, 3, 6, 12, 16, 19 and 31**

4 The amendments made by items 2, 3, 6, 12, 16, 19 and 31 apply in
5 relation to contracts entered into on or after the commencement of those
6 items.

7 **39 Application—items 5, 7, 9 to 11, 13, 17, 20 to 30 and 32 to**
8 **37**

9 The amendments made by items 5, 7, 9 to 11, 13, 17, 20 to 30 and 32 to
10 37 apply in relation to requests for access made under section 15 of the
11 *Freedom of Information Act 1982* on or after the commencement of
12 those items.