

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

**Freedom of Information (Amendment) Bill
1997**

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Substitution—
 3. Objects of this Act
 - 3A. Principle of availability
5. Interpretation
6. Substitution—
 7. Agencies must describe their functions and the documents that they hold
 8. Statements to be made available to the public
 9. Certain documents to be available for inspection and purchase
 - 9A. Unpublished documents not to prejudice public
7. Part not to apply to certain documents
8. Substitution—
 - 13A. Agencies and Ministers to provide records officers

Job No · 1995/158

TABLE OF PROVISIONS—continued

Section	
	13B Requests for assistance to identify documents
	14. Requests for access to documents
9	Transfer of requests
10	Requests involving the use of computers, etc
11.	Access to documents to be given on request
12	Time limit for deciding on requests
13.	Forms of access
14	Deferment of access
15.	Deletion of exempt matter
16.	Substitution—
	23. Requests may be refused in certain circumstances
17	Repeal
18	Reasons and other particulars of decisions to be given
19	Substitution—
	26 Procedure where a request for documents is made which is likely to affect relations between the Territory and the Commonwealth or a State
	27 Procedure where access is requested to a document which relates to business affairs etc.
	28 Liability for additional charges for access
	29 Remission of fees
20	Substitution—
	PART IV—EXEMPT DOCUMENTS
	32 Interpretation
	33 Documents which are fully exempt
	34 Documents which are subject to public interest exceptions
	35 Time limit on exemption claimed under section 34
	36 Agency to seek consent for access to certain documents
	37. Documents exempt under Commonwealth Act
	38. Executive documents
	39. Documents subject to legal professional privilege
	40 Documents relating to business affairs
	41 Certain documents arising out of companies and securities legislation
	PART V—ACCESS TO AND AMENDMENT OF PERSONAL RECORDS
	42 Right of access to personal information
	43. Persons sentenced to imprisonment
	44 Precautions
	45 Correction of information
	46 Reasons for refusal of requests for personal information
21	Complaints to Ombudsman

TABLE OF PROVISIONS—continued

Section	
22.	Repeal
23.	Internal review
24.	Applications to Tribunal
25.	Application to Tribunal where decision delayed
26.	Powers of Tribunal
27.	Repeal
28.	Tribunal to ensure non-disclosure of certain matters
29.	Production of exempt documents
30.	Repeal
31.	Protection against certain actions
32.	Substitution—
	78. Protection in respect of offences
33.	Reports to Legislative Assembly
34.	Determinations of fees and charges
35.	Consequential amendments

**SCHEDULE
CONSEQUENTIAL AMENDMENT 1997**

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**Freedom of Information (Amendment) Bill
1997**

A BILL

FOR

**An Act to amend the *Freedom of Information Act*
1989**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 **1.** This Act may be cited as the *Freedom of Information (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 1 July 1998.

Job No. 1995/158

Principal Act

3. In this Act, "Principal Act" means the *Freedom of Information Act 1989*.¹

Substitution

5 4. Section 3 of the Principal Act is repealed and the following sections substituted:

Objects of this Act

"3. (1) The objects of this Act are—

- 10 (a) to extend as far as possible the right of persons to have access to information in the possession of the Territory, by creating a general right of access to documents containing such information in accordance with the principle of availability in section 3A; and
- (b) further to promote the accountability of Government by—
 - 15 (i) enabling more effective public participation in the making and administering of laws and policies;
 - (ii) providing for proper access by each person to official information relating to that person; and
 - (iii) ensuring that information about the operation of agencies, and about their rules and practices, is readily available.

20 **Principle of availability**

"3A. A decision as to whether any official information is to be made available under this Act shall be made in accordance with the objects of this Act and with the principle that access to official information is to be limited only to the extent necessary to protect essential public interests and commercial confidentiality or to preserve the privacy of individuals."
25

Interpretation

5. Section 4 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definitions:

“ ‘application fee’ means a fee for—

- 30 (a) a request for access to a document under section 14; or
- (b) an application for review under section 59;

'personal information', in relation to a person, means information about the person or about the personal affairs of the person;

5 'records officer' means a person identified under section 13A as a person to whom requests for access to documents can be made;"; and

(b) by omitting subsections (4) and (5) and substituting the following subsections:

"(4) Where an agency is abolished—

10 (a) any request made to it shall be deemed to have been made to whichever existing agency has the functions most closely related to the subject of the request; and

(b) any decision made by it in relation to the request shall be deemed to have been made by that existing agency.

15 "(5) An agency which—

(a) is deemed under subsection (4) to have received a request, or made a decision; and

(b) was not in existence at the time of the request or of the decision;

20 shall be deemed, for the purpose only of dealing with the request or decision under this Act, to have been in existence at that time."

Substitution

6. Sections 7, 8 and 9 of the Principal Act are repealed and the following sections substituted:

25 Agencies must describe their functions and the documents that they hold

"7. (1) The responsible minister of an agency shall cause to be published from time to time, in accordance with this section, a statement, in a form approved by the Minister, that—

30 (a) describes the structure, functions and powers, and responsibilities of the agency, and indicates how they affect members of the public;

35 (b) describes any arrangements by which bodies or persons outside the Executive and its agencies are consulted, can make representations or otherwise participate in the policy-making or decision-making of the agency;

- (c) describes any manuals, guidelines or other documents setting out rules or principles which are to be observed in official decision-making or action which affects individuals;
- 5 (d) describes the kinds of documents and kinds of information held by it; and
- (e) gives clear details on how a person can obtain official information from the agency, and what information that person will need to provide in order to do so.

10 “(2) The first statement shall be published as soon as practicable after the commencement of this section, but in any case within 12 months after that commencement.

“(3) Revised statements shall be published at intervals of not more than 12 months.

15 “(4) A revised statement, or a supplement to the current statement, shall be published as soon as practicable after any change to the state of affairs described in the statement.

“(5) A copy of each statement and supplement shall be included—

- 20 (a) in the next report to be presented by the agency, or information to be provided by the agency, under section 8 of the *Annual Reports (Government Agencies) Act 1995*; or
- (b) if the agency is not required to present such a report or provide such information—in the next annual report that gives particulars of the affairs of the agency.

25 “(6) In approving a form under this section, the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Act.

“(7) This section does not require any information to be published if that information would constitute exempt matter.

30 “(8) Where an agency comes into existence after the commencement of this Act, the references in this section to the commencement of this Act shall be read as if they were references to the day on which the agency comes into existence.

“(9) For the purposes of this section, a statement is published when it is made available for inspection and purchase in accordance with section 8.

35 **Statements to be made available to the public**

“8. The principal officer of an agency shall ensure that copies of—

- (a) the current statement under section 7, together with any current supplements; and
- (b) the current index or statement under subsection 9 (2);

are made available to members of the public on request.

5 **Certain documents to be available for inspection and purchase**

“9. (1) The principal officer of an agency shall ensure that copies of the documents referred to in subsection (2) are available for inspection and purchase by members of the public, either from the agency or in some other manner convenient to members of the public.

10 “(2) Subsection (1) applies to any documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations which will affect the rights of persons, including—

- 15 (a) manuals, interpretations, rules, guidelines and precedents in the nature of letters of advice to persons inquiring about their rights;
- (b) documents containing particulars of a scheme administered by the agency which are not contained in an enactment or a subordinate law; and
- 20 (c) documents describing the procedures to be followed in enforcing an enactment or subordinate law administered by the agency.

“(3) The principal officer of the agency shall ensure that an index or other statement of the documents made available under this section is kept current.

25 “(4) This section does not require any information to be published if that information would constitute exempt matter.

“(5) A report of a responsible Minister under subsection 79 (2) in respect of a year shall include a statement about the way in which each agency for which that Minister has responsibility has complied with this section during that year.

30 **Unpublished documents not to prejudice public**

“9A. (1) This section applies in relation to a rule, guideline or practice relating to a function of an agency contained in a document that was required by section 8 or 9 to be made available, but was not made available.

“(2) In this section—

35 ‘relevant period’ means the period during which the rule, guideline or practice guideline was required to be made available, but was not.

“(3) If a person—

- (a) was unaware of the rule, guideline or practice; and
- (b) did, or omitted to do, some act or thing relevant to the performance of that function in relation to the person during the relevant period;

5 the person shall not be subjected to any prejudice only because of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by the person if he or she could lawfully have avoided that prejudice had he or she been aware of that rule, guideline or practice.”

Part not to apply to certain documents

7. Section 11 of the Principal Act is amended—

- 10 (a) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) material published by persons other than an agency and held by the agency for reference purposes.”; and
- (b) by omitting subsections (2), (3) and (4).

15 **Substitution**

8. Section 14 of the Principal Act is repealed and the following sections are substituted:

Agencies and Ministers to provide records officers

20 “13A. (1) The principal officer of an agency shall ensure that the agency has at all times an identified person to whom requests for documents under this Act can be made.

“(2) A Minister shall ensure that at all times a member of his or her staff has been identified as a person to whom requests for documents under this Act can be made.

25 **Requests for assistance to identify documents**

“13B. (1) In this section—

- (a) a reference to—
 - (i) an agency, other than the reference in subsection (2); or
 - (ii) the principal officer of an agency;
- 30 includes a reference to a Minister; and
- (b) a reference to a document of an agency includes a reference to an official document of a Minister.

“(2) A person who wishes to obtain access to what he or she has reason to believe is a document of an agency or an official document of a Minister may apply to the relevant records officer to discuss the matter.

“(3) The request may be made in writing, by telephone or in person.

5 “(4) If the person requests an appointment, the records officer shall arrange an appointment that is within 14 days after receiving the request.

“(5) The person shall provide the records officer with such information as is reasonably necessary to identify the document.

10 “(6) The person may provide grounds why he or she believes the request should be treated as urgent.

“(7) The principal officer of the agency shall ensure that the person is given all reasonable assistance—

(a) to identify the document;

15 (b) to apply for access to the document in accordance with this Act, if it is a document of the agency concerned; and

(c) to identify any agency to which the document appears likely to belong, if it is not a document of the agency concerned.

“(8) In giving assistance under this section, regard shall be had to any reasonable grounds for urgency provided by the person.

20 **Requests for access to documents**

“14. (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may request access in accordance with this section.

“(2) An application shall—

25 (a) be made in writing to the agency or Minister concerned;

(b) be accompanied by either the relevant application fee or an application under section 29 for the remission of the fee; and

(c) include such information as is reasonably necessary for the document to be identified by the agency or Minister concerned.

30 “(3) The person shall be offered assistance with the application in accordance with section 13B.

35 “(4) If an application is accompanied by an application for remission of the application fee, and the person is given notice that full remission is refused, the application shall then be treated as not complying with this section until the person has paid the applicable fee.”

Transfer of requests

9. Section 15 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “paragraph 6 (a)” and substituting “paragraph 6 (2) (a)”; and
- 5 (b) by omitting from paragraph (3) (a) “paragraph 6 (b)” and substituting “paragraph 6 (2) (b)”.

Requests involving the use of computers, etc

10. Section 16 of the Principal Act is amended by omitting from paragraph (1) (a) “(including a request of the kind described in subsection 23 (1))”.

Access to documents to be given on request

11. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “subsection 14 (2)” and substituting “section 14”;
- 15 (b) by omitting from subsection (2) “An” and substituting “Subject to subsection (3), an”; and
- (c) by adding at the end the following subsections:

“(3) Access shall be given to the document unless there is a clear public interest in refusing or deferring access.

20 “(4) Where—

- (a) the document requested contains information of a medical or psychiatric nature concerning the person making the request; and
- 25 (b) it appears to the principal officer of the agency concerned, or to the Minister concerned, that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person;

30 the principal officer or Minister may direct that access to the document, so far as it contains that information, shall be given to a medical practitioner nominated by that person, rather than to the person.”.

Time limit for deciding on requests

12. Section 18 of the Principal Act is amended—

- 35 (a) by omitting from subsection (1) all the words from and including “Minister” to and including “appropriate address of the agency or

the Minister;” and substituting “Minister in accordance with section 14”;

(b) by omitting from paragraph (1) (d) “30 days” and substituting “21 days”; and

5 (c) by omitting subsection (2).

Forms of access

13. Section 19 of the Principal Act is amended by adding at the end of subsection (1) the following paragraphs:

10 “(e) if the document is in a form from which a written document can be produced by the use of a computer or other equipment ordinarily available to the agency or in an office of the Minister—provision of a written document so produced;

(f) an excerpt from or summary of the document;

(g) an oral account of the document’s contents.”.

15 Deferment of access

14. Section 20 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Access shall not be deferred under this section for more than 90 days after receipt of the request for access.”.

20 Deletion of exempt matter

15. Section 21 of the Principal Act is amended—

(a) by adding at the end of paragraph (1) (a) “and”;

(b) by omitting from the end of paragraph (1) (b) “and”;

(c) by omitting paragraph (1) (c); and

25 (d) by omitting subsection (2) and substituting the following subsection:

“(2) Where access is granted to a copy of a document produced in accordance with subsection (1), the applicant shall be—

30 (a) informed that it is such a copy;

(b) informed of the provisions of this Act by which the matter deleted is exempt matter; and

- (c) given such other information as is reasonably necessary, because of the omissions, to interpret the resulting document.”.

Substitution

5 **16.** Section 23 of the Principal Act is repealed and the following section substituted:

Requests may be refused in certain circumstances

“23. (1) A request for access to a document under this Part may be refused only on 1 or more of the following grounds:

- 10 (a) that the request does not comply with section 14;
- (b) in a case to which section 16 does not apply—that the document does not exist or cannot be found;
- (c) that the document, or the information contained in the document, is already publicly available;
- 15 (d) that the document is not held by the agency or Minister concerned;
- (e) that the request is frivolous or vexatious, or that the information contained in it is trivial;
- (f) that the document is an exempt document.

20 “(2) A request for access to a document shall not be refused under this section unless the applicant has been offered assistance in accordance with section 13B.”.

Repeal

17. Section 24 of the Principal Act is repealed.

Reasons and other particulars of decisions to be given

25 **18.** Section 25 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“**(1)** This section applies to a decision to refuse or defer access to a document for which access is requested under this Part.

30 “**(1A)** Where a decision is made to which this section applies, the applicant shall be given notice in writing of the decision, together with—

- (a) the reasons for the decision; and
- (b) appropriate information on how the applicant may seek a review of the decision under this Act, or make a complaint to the Ombudsman.”.

Substitution

19. Sections 26 to 31 (inclusive) of the Principal Act are repealed and the following sections substituted:

5 **Procedure where a request for documents is made which is likely to affect relations between the Territory and the Commonwealth or a State**

“26. (1) This section applies in relation to a request for a document where—

- 10 (a) it appears that the document originated with, or was received from, or contains information that originated with, or was received from, the Commonwealth or a State;
- (b) arrangements have been entered into between the Territory and the Commonwealth or the State for consultations under this section; and
- 15 (c) the Commonwealth or the State might reasonably wish to contend that the document is an exempt document under paragraph 34 (1) (a), and that access to the document should be refused.

20 “(2) Where this section applies, before a decision is made to grant access to the document, the person responsible for administration of the arrangements shall ensure that the Commonwealth or the State is consulted on the matter, allowing a reasonable time for the consultation to be concluded in accordance with those arrangements.

“(3) Where a decision is made to give access to the document—

- 25 (a) the agency or Minister making the decision shall, in accordance with the arrangements, cause notice in writing of the decision to be given to the Commonwealth or the State, as well as to the person who made the request; and
- (b) access shall not be given to the document, unless—
- 30 (i) the time for an application to the Tribunal by the Commonwealth or the State in accordance with section 68 for review of the decision that the document is not an exempt document under section 34 has expired and such an application has not been made; or
- 35 (ii) such an application has been made and the Tribunal has confirmed the decision.

Procedure where access is requested to a document which relates to business affairs etc.

“27. (1) This section applies in relation to a request for a document where—

- 5 (a) the document contains information concerning the business affairs of a person or undertaking, of the kind referred to in section 40; and
- 10 (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 59 a decision refusing the request, that the person or undertaking, might reasonably wish to contend that the document is an exempt document under paragraph 33 (g), and that access to the document should be refused.

15 “(2) Where this section applies, before a decision is made to grant access to the document, the agency or Minister making the decision shall take all steps which are reasonable in the circumstances (including the time limits applicable under section 18) to—

- (a) give the person or undertaking the opportunity to make submissions supporting a contention that the document is exempt under paragraph 33 (g) and that access to it should be refused; and
- 20 (b) take account of any submissions made.

“(3) Where a decision is made to give access to the document—

- (a) the agency or Minister making the decision shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and
- 25 (b) access shall not be given to the document, to the extent that it contains the information referred to in subsection (1), unless—
- (i) the time for an application to the Tribunal by that person under section 69 has expired and such an application has not been made; or
- 30 (ii) such an application has been made and the Tribunal has confirmed the decision.

Liability for additional charges for access

35 “28. (1) Where a person is to be given access to a document under section 17, the notification to the person that access will be given shall include particulars of any charges that apply to the access, or, if access in different forms is offered to the person, the charges that apply to each of the different forms.

“(2) Subject to any requirement for a deposit under paragraph 80 (1) (c), a person is not liable for a charge referred to in subsection (1) until he or she has accepted access to the document in the form to which the charge applies.

- 5 “(3) A person is not liable for any charge referred to in subsection (1) if the agency or Minister does not comply with any requirement under this Act as to time limits in relation to a request for access.

Remission of fees

10 “29. (1) A person who has paid, is liable for, or has been notified that he or she will become liable for, an application fee or other charge under this Act may apply in writing to the agency or Minister concerned seeking the total or partial remission of the charge.

 “(2) Where the agency or Minister is satisfied that—

- 15 (a) the payment of the full charge would cause or has caused financial hardship to the applicant or to a person on whose behalf the application was made;
- (b) the document relates to the personal affairs of the applicant or to a person on whose behalf the application was made; or
- 20 (c) the giving of access is in the general public interest or in the interest of a substantial section of the public;

the agency or Minister may remit the charge or part of the charge.

25 “(3) The agency or Minister shall ensure that the applicant is notified of a decision on the application as soon as practicable, but in any case not later than 28 days after the day on which the application was received by or on behalf of the agency or Minister.”.

Substitution

20. Parts IV and V of the Principal Act are repealed and the following Parts substituted:

“PART IV—EXEMPT DOCUMENTS

30 Interpretation

 “32. (1) A provision of this Part under which certain documents are exempt documents is not limited in its scope or operation in any way by any other provision of this Part under which documents are exempt documents.

35 “(2) A document may be an exempt document under more than 1 provision.

 “(3) A copy of an exempt document is an exempt document.

“(4) Where a document is exempt because of matter that it contains, a part of the document, or extract from it, which contains that matter is an exempt document.

5 “(5) A document that would, apart from this subsection, be exempt only because it contains matter relating to, or obtained in confidence from, a person, is not exempt if that person expressly or impliedly consents to access being given to the document.

10 “(6) In deciding whether a document is an exempt document, it shall be presumed, unless evidence to the contrary is produced, that a document is not exempt.

Documents which are fully exempt

“33. A document is an exempt document if—

- (a) it is an Executive document referred to in section 38;
- 15 (b) it is a document referred in section 37, which would be exempt under the *Freedom of Information Act 1982* of the Commonwealth;
- (c) its disclosure would prejudice the maintenance of law in Australia by—
 - 20 (i) prejudicing the enforcement of the law, whether generally or in a particular case;
 - (ii) prejudicing the right of a person to a fair trial or an impartial adjudication in a particular case; or
 - (iii) prejudicing the maintenance of lawful methods for the protection of public order;
- 25 (d) its disclosure would endanger the safety of any person;
- (e) its disclosure would constitute a breach of confidence;
- (f) its disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person) other than the applicant;
- 30 (g) its disclosure would disclose information relating to business affairs of a person or undertaking other than the Territory or an agency, being business affairs of the kind referred to in section 40;
- (h) its disclosure would breach legal professional privilege, except as provided in section 39;
- 35 (j) its disclosure would, apart from this Act and any immunity of the Crown—

- (i) be in contempt of court;
- (ii) be contrary to an order made or direction given by a Royal Commission or tribunal; or
- 5 (iii) infringe the privileges of the Legislative Assembly, of the Commonwealth Parliament, of the Parliament of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island;
- (k) it is a document relating to companies and securities referred to in section 41; or
- 10 (m) it is—
 - (i) a roll of electors kept under the *Electoral Act 1992*;
 - (ii) a roll extract within the meaning of that Act; or
 - 15 (iii) a document setting out particulars of enrolled persons (other than the applicant) that was used in keeping the roll of electors, or was derived from it.

Documents which are subject to public interest exceptions

“34. (1) A document is an exempt document subject to the public interest exception in subsection (3) if its disclosure—

- 20 (a) would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State;
- (b) would disclose information relating to business affairs of the Territory or of an agency, being business affairs of the kind referred to in section 40;
- 25 (c) would prejudice the provision of information to the Territory, whether the provision can be compelled under law or not;
- (d) would prejudice measures for protecting public health or safety;
- (e) would, apart from this Act and any immunity of the Crown, be
30 contrary to an order made or direction given by a person or body, other than a court, tribunal or Royal Commission, having power to take evidence on oath;
- (f) would prejudice the proper economic management of the Territory;
- (g) would have a substantial adverse effect on the financial interests of the Territory or of an agency; or
- 35 (h) would result in an improper gain or advantage for the applicant or some other person.

5 “(2) A document is an exempt document subject to the public interest exception in subsection (3) if there is in force an enactment, applying specifically to information of a kind contained in the document, which prohibits persons referred to in the document from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

“(3) A document referred to in this section is not exempt if, on balance, the public interest in allowing access to the document outweighs the public interest in refusing access.

10 **Time limit on exemption claimed under section 34**

15 “35. (1) Where an application is made for access to a document to which access was requested (whether by the same applicant or another) more than 12 months previously, and the earlier request was refused on the ground that the document was an exempt document under section 34, the document is not an exempt document under that section unless it is the subject of a certificate under subsection (2).

“2) An agency or Minister may request the Ombudsman to certify that a document referred to in subsection (1) is an exempt document under a specified provision of section 34.

20 “(3) Such a certificate shall specify a period of not more than 12 months during which it will remain current.

Agency to seek consent for access to certain documents

25 “36. Where a document is an exempt document only because it contains information relating to, or obtained in confidence from, the Commonwealth or a State or an agency of the Commonwealth or of a State, the agency or Minister to whom a request for access is made shall request the Commonwealth or State, or the agency, to consent to access being given.

Documents exempt under Commonwealth Act

30 “37. (1) This section applies to a document for which there are reasonable grounds to believe that the document would, if it were in the possession of a Commonwealth agency, be an exempt document under section 33, 33A, 34, 35, 39, 44 or 47 of the *Freedom of Information Act 1982* of the Commonwealth.

35 “(2) Where a request is made for access to a document to which this section applies, the principal officer or the Minister shall transfer the request to the Commonwealth agency whose functions are most closely related to the subject of the request and send the document to that agency.

“(3) Where a document is so transferred, the applicant shall be notified of the transfer.

Executive documents

“38. (1) Paragraph 34 (1) (a) applies to—

- 5 (a) a document that was brought into existence for the purpose of submission for consideration by the Executive but has not yet been submitted for consideration; or
- (b) a document—
- (i) which is an official record of the Executive; or
- (ii) the disclosure of which would involve the disclosure of any deliberation or decision of the Executive;
- 10 where the decision to which the document relates has not been put into effect and has not been made public by the Executive.

“(2) A reference in this section to the Executive includes a reference to a Committee of the Executive.

Documents subject to legal professional privilege

15 “39. A document subject to legal professional privilege is not an exempt document under paragraph 33 (h) if the privilege attaches to—

- (a) the Territory or an agency; or
- (b) an officer of the Territory or of an agency, or a Minister of the Territory, in his or her official capacity;
- 20 and the document is not relevant to any current or prospective litigation.

Documents relating to business affairs

“40. (1) For the purposes of this Part, a document relates to the business affairs of a person or undertaking if its disclosure under this Act would disclose—

- 25 (a) trade secrets of the person or undertaking;
- (b) any other information having a commercial value to the person or undertaking that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- 30 (c) information concerning the person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of the undertaking, where disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs, or that undertaking in
- 35 respect of its lawful business, commercial or financial affairs.

“(2) A reference in this section to an undertaking includes a reference to an organisation or business and to an undertaking that is carried on by, or by an authority of, the Territory, the Commonwealth, a State or by a local government authority.

5 **Certain documents arising out of companies and securities legislation**

“41. For the purposes of this Part, a document is a document arising out of companies and securities legislation if it is—

- 10 (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, the Commonwealth, a State or an authority of the Commonwealth or of a State;
- 15 (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of that Council was officially published; or
- 20 (c) a document furnished to the National Companies and Securities Commission by the Territory, the Commonwealth, a State, a Territory authority or by an authority of the Commonwealth or a State and relating solely to the functions of the Commission in relation to the law of the Commonwealth or of a State.

“PART V—ACCESS TO AND AMENDMENT OF PERSONAL RECORDS

Right of access to personal information

25 “42. (1) Subject to this Part, a person who is an Australian citizen, or whose continued presence in Australia is not subject to any limitation as to time imposed by law, has a right to, and shall on request be given, access to any personal information held by an agency, or by a Minister in his or her capacity as a Minister, that—

- 30 (a) is about the person; and
- (b) is held in such a way that it can readily be accessed.

“(2) Section 13B and sections 15 to 22 (inclusive) apply, with necessary modifications, to a request made or proposed to be made under subsection (1).

35 “(3) Nothing in this section requires an agency or a Minister to compile files or maintain data banks of personal information.

Persons sentenced to imprisonment

5 “43. Nothing in section 48 gives a person who has been sentenced to a period of imprisonment for an offence a right to be given access to personal information held by the Territory or the Australian Federal Police that relates to the offence for which the person was sentenced to imprisonment or to the conviction or sentencing of the person for the offence.

Precautions

- 10 “44. Where a request is made for access to information under subsection 48 (1), the agency or Minister to whom the request is made—
- 15 (a) shall not give the person who made the request access to the information unless the agency or Minister is satisfied as to the identity of the person;
 - (b) ensure that any information intended to be given to a person is only given—
 - 15 (i) to that person; or
 - (ii) where the request for access is made by an agent of the person—only to the person or to his or her agent; and
 - 20 (c) shall ensure that if the request is made by an agent of the person seeking access to the information—the agent is authorised in writing or by some other appropriate means to make the request.

Correction of information

- 25 “45. (1) A person who is given access to information under subsection 48 (1) may, by letter addressed to the agency or Minister holding the information—
- 25 (a) request correction of the information if the person believes that the information is—
 - (i) inaccurate or out of date; or
 - (ii) incomplete and gives a misleading impression; and
 - 30 (b) require that a notation or addendum be attached or added to the information stating the nature of any correction requested but not made.
- 35 “(2) Where an agency or Minister receives a letter under subsection (1), the agency or Minister shall, within 21 days after the day on which the letter was received, inform the person by whom the letter was sent of the action taken as a result of the letter.

Reasons for refusal of requests for personal information

“46. (1) An agency or a Minister may refuse to grant access to personal information requested under subsection 48 (1) only if—

- 5 (a) disclosure of the information would involve unwarranted disclosure of the affairs of another person;
- (b) the information is evaluative material and disclosure of the information, or information identifying the person who supplied it, would breach an express or implied promise made to the person who supplied the information—that—
- 10 (i) the information; or
- (ii) the identity of the person who supplied it;
- would be held in confidence;
- (c) in the case of a natural person under the age of 16, the disclosure of that information would be contrary to the person’s interest;
- 15 (d) the information relates to a person who has been convicted of an offence or is, or has been, detained in custody and disclosure of the information would be likely to prejudice the safe custody or rehabilitation of the person;
- (e) disclosure of the information would breach legal professional privilege; or
- 20 (f) the request is frivolous or vexatious or the information requested is trivial.

“(2) Where—

- 25 (a) the information requested includes information of a medical or psychiatric nature concerning the person making the request; and
- (b) it appears to the principal officer of the agency concerned, or to the Minister concerned, that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person;

30 the principal officer or Minister may direct that access to that information, shall be given to a medical practitioner nominated by that person, rather than to the person.

“(3) In this section—

35 ‘evaluative material’ means evaluative or opinion material compiled solely for—

- 5 (a) the purpose of determining the suitability, eligibility or qualifications of the person to whom the information relates—
- (i) for employment or appointment to an office;
 - (ii) for promotion in employment or in an office;
 - (iii) for continuance in employment or in an office;
 - (iv) for removal from employment or an office; or
 - (v) for the awarding of a contract, award, scholarship, honour or other benefit; or
- 10 (b) the purpose of determining whether any contract, award, scholarship, honour or benefit granted to the person to whom the material relates should be continued, modified or cancelled.”.

Complaints to Ombudsman

- 15 21. Section 54 of the Principal Act is amended by omitting subsection (4).

Repeal

22. Section 58 of the Principal Act is repealed.

Internal review

- 20 23. Section 59 of the Principal Act is amended—
- (a) by inserting in paragraph (1) (a) “or personal information” after “document” (twice occurring); and
 - (b) by inserting in paragraph (3) (b) “or personal information” after “document”.

Applications to Tribunal

- 25 24. Section 60 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (a) “, not being a decision under section 33,”;
 - (b) by inserting after paragraph (1) (a) the following paragraphs:
- 30 “(aa) a decision refusing to grant access to personal information in accordance with a request or a decision deferring the provision of access to personal information;

(ab) a decision refusing a request under paragraph 51 (1) (a) for the correction of information held by an agency or a Minister;

5 (ac) a decision refusing to comply with a requirement under paragraph 51 (1) (b) that a notation or addendum be attached or added to information held by an agency or a Minister stating the nature of a correction requested to the information but not made;”; and

(c) by inserting in subsection (2) “, (aa)” after “paragraph (1) (a)”.

10 **Application to Tribunal where decision delayed**

25. Section 61 of the Principal Act is amended by inserting in subsections (1), (3) and (5) “or personal information” after “document”.

Powers of Tribunal

15 26. Section 62 of the Principal Act is amended by omitting subsections (3), (4), (5), (6) and (8).

Repeal

27. Sections 63 to 67 (inclusive) of the Principal Act are repealed.

Tribunal to ensure non-disclosure of certain matters

20 28. Section 73 of the Principal Act is amended by omitting from subsection (1) all words from and including “to the applicant of” to the end of the subsection and substituting “to the applicant of exempt matter contained in a document to which the proceedings relate.”.

Production of exempt documents

25 29. Section 74 of the Principal Act is amended by omitting subsections (5) and (6).

Repeal

30. Section 75 of the Principal Act is repealed.

Protection against certain actions

31. Section 77 of the Principal Act is amended—

30 (a) by inserting after subsection (1) the following subsection:

“(1A) Where access has been given to personal information and—

(a) the access was required by this Act to be given; or

- (b) the access was authorised by a Minister or by an officer having authority under section 22 or 59 to make decisions in respect of requests, in the *bona fide* belief that access was required by this Act to be given;

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

- (b) by inserting after subsection (2) the following subsection:

15 – “(2A) The giving of access to personal information in
consequence of a request shall not be taken, for the purposes of the
law relating to defamation or breach of confidence, to constitute an
authorisation or approval of the publication of the information by
the person to whom access is given.”.

Substitution

20 32. Section 78 of the Principal Act is repealed and the following
section substituted:

Protection in respect of offences

“78. Where access has been given to a document or to personal
information and—

- 25 (a) the access was required by this Act to be given; or
(b) the access was authorised by a Minister, or by an officer having
authority under section 22 or 59 to make decisions in respect of
requests, in the *bona fide* belief that access was required by this
Act to be given;

30 neither the person authorising the access nor any person concerned in the
giving of the access is guilty of a criminal offence only because of the
authorising or giving of the access.”.

Reports to Legislative Assembly

33. Section 79 of the Principal Act is amended—

- 35 (a) by omitting from paragraphs (3A) (b) and (c) “section 48 for the
amendment of personal records” and substituting “subsection
51 (1) for the correction of information”; and

- (b) by omitting from subparagraph (4) (a) (vi) “amend records under section 48” and substituting “correct information under subsection 51 (1)”.

Determinations of fees and charges

5 **34.** Section 80 of the Principal Act is amended—

- (a) by omitting paragraph (1) (b) and substituting the following paragraphs:

10 “(b) determine a scale or method of calculating charges relating to the provision of access to documents under this Act;

(ba) require deposits on account in cases where the total charge is likely to be more than \$250;”;

- (b) by omitting subsection (2) and substituting the following subsections:

15 “(2A) Charges determined under subsection (1) shall not vary for different applicants or in respect of documents of different agencies or Ministers.

20 “(2B) A charge may be determined under subsection (1) for the time spent by officers of the agency or the Minister’s office in—

(a) retrieving or searching for a document; or

(b) preparing to give access to it and giving access to it, including any supervision of the inspection of the document;

25 at a single hourly rate that applies regardless of the classification or designation of the officer who undertakes the work involved.

“(2C) No charge shall be determined under subsection (1) which relates to the costs of deciding whether or not to give access to a document.

30 “(2D) No application fee or other charge determined under this section shall apply to a request by a member of the Legislative Assembly.”.

Consequential amendments

35. The Principal Act is amended as set out in the Schedule.

SCHEDULE
CONSEQUENTIAL AMENDMENTS

- Subsection 4 (1) (definition of “request”)—**
Omit “subsection 14 (1)”, substitute “section 14”.
- Paragraph 16 (1) (a)—**
Omit “subsection 14 (2)”, substitute “section 14”.
- 5 **Paragraph 17 (1) (a)—**
Omit “subsection 14 (2)”, substitute “section 14”.
- Paragraph 59 (5) (c)—**
Omit “section 30”, substitute “section 29”.
- Subsection 68 (1)—**
- 10 (a) Omit “section 34”, substitute “paragraph 34 (1) (a)”;
(b) omit “subsection 26 (2)”, substitute “subsection 26 (3)”.
- Subsection 69 (1)—**
Omit “section 43”, substitute “paragraph 33 (g)”.
- Subsection 72 (2)—**
- 15 Omit “subsection 25 (1)”, substitute “section 25”.
- Paragraph 79 (3A) (a)—**
Omit “section 18”, substitute “section 14”.
- Paragraph 79 (3A) (b)—**
Omit “section 48”, substitute “section 42”.
- 20 **Paragraph 79 (3A) (c)—**
(a) Omit “section 18”, substitute “section 14”;
(b) omit “section 48”, substitute “section 42”.
- Subparagraph 79 (4) (a) (i)—**
Omit “section 18”, substitute “section 14”.

SCHEDULE—continued

Subparagraph 79 (4) (a) (i)—

Omit “section 48”, substitute “section 42”.

NOTE

Principal Act

1. Reprinted as at 1 July 1996.