

Authorised Version No. 080
Freedom of Information Act 1982
No. 9859 of 1982

Authorised Version incorporating amendments as at
1 December 2012

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Authorised Version No. 080
Freedom of Information Act 1982
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Authorised Version incorporating amendments as at
1 December 2012

An Act to give the Members of the Public Rights of Access to
Official Documents of the Government of Victoria and of its
Agencies and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):

PART I—PRELIMINARY

1 Short title and commencement

- (1) This Act shall be cited as the **Freedom of Information Act 1982**.
- (2) Except for Part II, this Act shall come into operation on a day six months from the day on which it receives the Royal Assent.
- (3) Part II shall come into operation on a day twelve months from the date of commencement provided for in subsection (2).

* * * * *

S. 2
repealed by
No. 58/1993
s. 15.

3 Object of Act

- (1) The object of this Act is to extend as far as possible the right of the community to access to information in the possession of the Government of Victoria and other bodies constituted under the law of Victoria for certain public purposes by—
 - (a) making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices; and
 - (b) creating a general right of access to information in documentary form in the possession of Ministers and agencies limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.
- (2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

4 Act binds the Crown

This Act binds the Crown not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5 Definitions

(1) In this Act, except insofar as the context or subject-matter otherwise indicates or requires—

agency means a department council or a prescribed authority;

S. 5(1) def. of *agency* amended by No. 58/1993 s. 16(a).

applicant means a person who has made a request in accordance with section 17 or has applied under section 12(1) for a statement published by a principal officer to be altered;

closed meeting in relation to a council, means a meeting closed to the public under section 89(2) of the **Local Government Act 1989**;

S. 5(1) def. of *closed meeting* inserted by No. 58/1993 s. 16(b).

council has the same meaning as in section 3(1) of the **Local Government Act 1989**;

S. 5(1) def. of *council* inserted by No. 58/1993 s. 16(b).

department means a department within the meaning of the **Public Administration Act 2004** or an office specified in section 16(1) of that Act;

S. 5(1) def. of *department* substituted by Nos 10046 s. 32(a), 58/1993 s. 4, 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 84(a)).

document includes, in addition to a document in writing—

S. 5(1) def. of *document* amended by No. 30/2006 s. 19(1).

(a) any book map plan graph or drawing;
and

(b) any photograph; and

- (c) any label marking or other writing which identifies or describes any thing of which it forms part, or to which it is attached by any means whatsoever; and
- (d) any disc tape sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (e) any film negative tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words figures letters or symbols which are capable of carrying a definite meaning to persons conversant with them; and
- (g) any copy, reproduction or duplicate of any thing referred to in paragraphs (a) to (f); and
- (h) any part of a copy, reproduction or duplicate referred to in paragraph (g)—

but does not include such library material as is maintained for reference purposes;

document of an agency or document of the agency means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency;

enactment means an Act or an instrument (including rules, regulations, local laws or by-laws) made under an Act;

S. 5(1) def. of *enactment* amended by No. 12/1989 s. 4(1)(Sch. 2 item 46.1).

exempt document means—

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

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

Freedom of Information Commissioner means the Freedom of Information Commissioner appointed under Part IA;

S. 5(1) def. of *Freedom of Information Commissioner* inserted by No. 6/2012 s. 4.

health information has the same meaning as in the **Health Records Act 2001**;

S. 5(1) def. of *health information* inserted by No. 2/2001 s. 101(1)(a).

Health Services Commissioner means Health Services Commissioner appointed under the **Health Services (Conciliation and Review) Act 1987** and includes the Acting Health Services Commissioner under that Act;

S. 5(1) def. of *Health Services Commissioner* inserted by No. 2/2001 s. 101(1)(a).

S. 5(1) def. of
officer
amended by
Nos 58/1993
s. 16(c)(i)–(iii),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 84(b)).

officer—

- (a) in relation to an agency, other than a council, includes a member of the agency, a member of the staff of the agency, and any person employed by or for the agency, whether that person is one to whom the provisions of the **Public Administration Act 2004** apply or not; and
- (b) in relation to a council, includes a member of the council, a member of the staff of the council and any person employed by or for the council;

official document of a Minister or *official document of the Minister* means a document in the possession of a Minister, or in the possession of the Minister concerned, as the case requires, that relates to the affairs of an agency, and, for the purposes of this interpretation, a Minister shall be deemed to be in possession of a document that has passed from his possession if he is entitled to access to the document and the document is not a document of an agency;

Ombudsman means the Ombudsman appointed under the **Ombudsman Act 1973**;

prescribed authority means—

- (a) a body corporate established for a public purpose by, or in accordance with, the provisions of an Act, or a body unincorporate created by the Governor in Council or by a Minister, other than—
 - (i) an incorporated company or association;

S. 5(1) def. of
*prescribed
authority*
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 46.2),
58/1993
s. 16(d)(i)(ii).

(ii) a body that, under subsection (2),
is not to be taken to be a
prescribed authority for the
purposes of this Act;

(iii) a Royal Commission; or

* * * * *

(v) a school council;

(b) any other body, whether incorporated
or unincorporated, declared by the
regulations to be a prescribed authority
for the purposes of this Act, being—

(i) an incorporated company or
association or unincorporated
body which is supported directly
or indirectly by government funds
or other assistance or over which
the State is in a position to
exercise control; or

(ii) a body established by or under an
Act of Parliament;

(c) subject to subsection (3), the person
holding, or performing the duties of, an
office established by an Act; or

(d) the person holding, or performing the
duties of, an appointment declared by
the regulations to be an appointment the
holder of which is a prescribed
authority for the purposes of this Act,
being an appointment made by the
Governor in Council, or by a Minister,
otherwise than under an Act;

S. 5(1) def. of
*principal
officer*
amended by
Nos 10046
s. 32(b),
58/1993
s. 16(e),
46/1998
s. 7(Sch. 1),
12/1999
s. 4(Sch. 2
item 5.1),
108/2004
s. 117(1)
(Sch. 3
item 84(c)).

principal officer means—

- (a) in relation to a department, the person employed as or performing the duties of the Department Head within the meaning of the **Public Administration Act 2004**; and
- (aa) in relation to a council, the person holding, or performing the duties of, the office of chief administrative officer of the council (by whatever name called); and
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in any other case—the person who constitutes that authority or, if the authority is constituted by two or more persons, the person who is entitled to preside at any meeting of the authority at which he is present;

record means a document containing information relating to the personal affairs of a person and includes a document containing information relating to the personal affairs of a deceased person;

request means a request made in accordance with section 17;

responsible Minister means—

- (a) in relation to a department—the Minister administering the relevant department;

- (b) in relation to a prescribed authority referred to in paragraph (a) of the interpretation of "prescribed authority"—the Minister administering the Act by which, or in accordance with the provisions of which, the prescribed authority is established;
- (c) in relation to a prescribed authority referred to in paragraph (c) of that interpretation—the Minister administering the Act by which the office is established; or
- (d) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in respect of that authority— or another Minister acting for and on behalf of that Minister;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 5(1) def. of ***Tribunal*** inserted by No. 10155 s. 67(1)(a), substituted by No. 52/1998 s. 311(Sch. 1 item 32.1).

- (2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an Act for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.
- (3) A person shall not be taken to be a prescribed authority by virtue of his holding, or performing the duties of—

- (a) a prescribed office;
 - (b) an office the duties of which he performs as duties of his employment as an officer of a department or as an officer of or under a prescribed authority;
 - (c) an office or member of a body; or
 - (d) an office established by an enactment for the purposes of a prescribed authority.
- (4) For the purposes of this Act, the Police Force of Victoria shall be deemed to be a prescribed authority.

6 Act not to apply to courts etc.

For the purposes of this Act—

- (a) in relation to its or his judicial functions, a court or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a department; and
- (b) in relation to those matters which relate to the judicial functions of the court, a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a department.

S. 6AA
inserted by
No. 6/2012
s. 5.

6AA Act not to apply to access to certain documents of Freedom of Information Commissioner

This Act does not apply to access to a document that is in the possession of—

- (a) the Freedom of Information Commissioner;
or
- (b) a member of staff of the office of the Freedom of Information Commissioner; or

(c) a contractor, agent or other person acting for or on behalf of the Freedom of Information Commissioner—

to the extent that the document is the subject of, or discloses information that relates to—

(d) a review under Part VI; or

(e) a complaint to the Freedom of Information Commissioner under Part VIA.

6A Relationship with other laws

S. 6A
inserted by
No. 30/2006
s. 20.

(1) This Act does not affect the operation of any other Act or law (including, but not limited to, the **Public Records Act 1973**, the **Information Privacy Act 2000** and the **Health Records Act 2001**)—

(a) that requires information concerning documents of an agency or official documents of a Minister to be made available to the public; or

(b) that enables a person to obtain access to a document of an agency or an official document of a Minister.

(2) Nothing in this section limits or affects section 15 or 16.

Note

Section 10A of the **Public Records Act 1973** provides that nothing in that Act prevents a person from giving access to records otherwise than in accordance with that Act where the person can properly do so or is required by law to do so. See also sections 6 and 12 of the **Information Privacy Act 2000** and sections 7 and 16 of the **Health Records Act 2001**.

s. 6B

PART IA—FREEDOM OF INFORMATION COMMISSIONER

Pt 1A
(Heading and
ss 6B–6K)
inserted by
No. 6/2012
s. 6.

6B Freedom of Information Commissioner

There is to be a Freedom of Information
Commissioner.

S. 6B
inserted by
No. 6/2012
s. 6.

**6C Functions and powers of Freedom of Information
Commissioner**

S. 6C
inserted by
No. 6/2012
s. 6.

- (1) The Freedom of Information Commissioner has the following functions—
- (a) to promote understanding and acceptance by agencies of this Act and the object of this Act;
 - (b) to conduct reviews of decisions by agencies on requests under this Act;
 - (c) to receive and handle complaints in accordance with Part VIA;
 - (d) to provide advice, education and guidance to agencies in relation to compliance with any professional standards prescribed by the regulations;
 - (e) to monitor compliance by agencies with those professional standards;
 - (f) to provide advice, education and guidance to agencies and the public in relation to the Commissioner's functions;
 - (g) in accordance with Division 3 of Part VII, to report on the operation of this Act;
 - (h) at the request of the Minister, to provide advice to the Minister in relation to the operation and administration of this Act;

- (i) any other functions conferred on the Commissioner by or under this or any other Act.
- (2) The Freedom of Information Commissioner has power to do all things necessary or convenient to be done in connection with the performance of his or her functions under this Act.
- (3) The Freedom of Information Commissioner must have regard to the object of this Act in performing his or her functions or exercising his or her powers under this Act.

6D Appointment of Freedom of Information Commissioner

S. 6D
inserted by
No. 6/2012
s. 6.

- (1) The Governor in Council may appoint an eligible person as the Freedom of Information Commissioner.
- (2) The following persons are not eligible to be appointed as the Freedom of Information Commissioner—
 - (a) a person who is a member of the Parliament of Victoria or of the Commonwealth or of another State or Territory;
 - (b) a person who is a member of a council.

6E Terms and conditions of appointment

S. 6E
inserted by
No. 6/2012
s. 6.

- (1) The appointment of the Freedom of Information Commissioner is to be for the period, not exceeding 5 years, set out in the instrument of appointment.
- (2) The appointment of the Freedom of Information Commissioner is to be on the terms and conditions set out in the instrument of appointment.
- (3) The Freedom of Information Commissioner may be reappointed.

s. 6F

- (4) The Freedom of Information Commissioner must not directly or indirectly engage in paid employment outside the duties of his or her office.
- (5) The **Public Administration Act 2004** does not apply to the Freedom of Information Commissioner in respect of his or her office as such except as provided in section 16 of that Act.

S. 6F
inserted by
No. 6/2012
s. 6.

6F Remuneration

- (1) The Freedom of Information Commissioner is entitled to be paid the remuneration and allowances that are determined from time to time by the Governor in Council.
- (2) The remuneration of the Freedom of Information Commissioner cannot be reduced during his or her period of appointment, unless he or she consents to the reduction.

S. 6G
inserted by
No. 6/2012
s. 6.

6G Vacancy and resignation

The Freedom of Information Commissioner ceases to hold office if he or she—

- (a) resigns by notice in writing delivered to the Governor; or
- (b) becomes an insolvent under administration; or
- (c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or
- (e) nominates for election as a member of a council; or
- (f) is removed from office under section 6H.

6H Suspension and removal from office

S. 6H
inserted by
No. 6/2012
s. 6.

- (1) The Governor in Council may suspend the Freedom of Information Commissioner from office on any ground on which the Governor in Council is satisfied that the Commissioner is unfit to hold office.
- (2) The Minister must cause a full statement of the grounds of suspension to be presented to each House of Parliament within 7 sitting days of that House after the suspension.
- (3) The Freedom of Information Commissioner must be removed from office by the Governor in Council if each House of Parliament, within 20 sitting days after the day when the statement is presented to it, declares by resolution that the Commissioner ought to be removed from office.
- (4) The Governor in Council must remove the suspension and restore the Freedom of Information Commissioner to office unless each House makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.
- (5) If the Freedom of Information Commissioner is suspended from office under subsection (1), he or she is taken not to be the Freedom of Information Commissioner during the period of suspension.

6I Acting Freedom of Information Commissioner

S. 6I
inserted by
No. 6/2012
s. 6.

- (1) The Governor in Council may appoint a person eligible to be appointed as Freedom of Information Commissioner to act as the Freedom of Information Commissioner—
 - (a) during a vacancy in the office of the Freedom of Information Commissioner; or

-
- (b) during any period, or all periods, when the Freedom of Information Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office.
- (2) The appointment is to be for a period, not exceeding 6 months, set out in the instrument of appointment.
- (3) A person appointed under subsection (1) is eligible for reappointment.
- (4) The Governor in Council may at any time remove the Acting Freedom of Information Commissioner appointed under subsection (1) from office.
- (5) While a person is acting in the office of Freedom of Information Commissioner, the person—
- (a) has, and may exercise, all the powers and must perform all the functions of that office; and
 - (b) is entitled to be paid the remuneration and allowances that the Freedom of Information Commissioner would have been entitled to for performing those functions.

S. 6J
inserted by
No. 6/2012
s. 6.

6J Staff

The Freedom of Information Commissioner may—

- (a) employ under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the purposes of the Commissioner's functions under this Act; and
- (b) engage any contractor, agent or other person to assist the Commissioner in the performance of the Commissioner's functions.

6K Delegation

The Freedom of Information Commissioner may by instrument delegate to a person referred to in section 6J any of the Commissioner's functions and powers except—

- (a) the power to make a decision on a review under Part VI; or
 - (b) the power to make recommendations in relation to a complaint under Part VIA; or
 - (c) the power to prepare a report under Part VII; or
 - (d) this power of delegation.
-

S. 6K
inserted by
No. 6/2012
s. 6.

s. 6L

PART IB—PROFESSIONAL STANDARDS

Pt 1B
(Heading and
ss 6L, 6M)
inserted by
No. 6/2012
s. 6.

6L Development of professional standards

S. 6L
inserted by
No. 6/2012
s. 6.

- (1) The Minister may develop professional standards relating to—
 - (a) the conduct of agencies in performing functions under this Act; and
 - (b) the administration of this Act in relation to agencies and the operation of this Act by agencies.
- (2) The professional standards may include standards for the processing of requests under this Act, including standards for—
 - (a) assistance for applicants in making requests; and
 - (b) identification of relevant documents; and
 - (c) consultation; and
 - (d) clear communication with applicants; and
 - (e) timely decision-making.
- (3) The professional standards must not be inconsistent with this Act.
- (4) The Minister may recommend the making of regulations under this Act to prescribe the professional standards.

6M Compliance with professional standards when prescribed by regulations

S. 6M
inserted by
No. 6/2012
s. 6.

- (1) The principal officer of an agency and any officer or employee of the agency concerned in the operation of this Act must comply with any professional standards that are prescribed by the

regulations in performing his or her functions under this Act.

- (2) The principal officer of an agency must ensure that any officer or employee of the agency concerned in the operation of this Act complies with any professional standards that are prescribed by the regulations in performing his or her functions under this Act.

**PART II—PUBLICATION OF CERTAIN DOCUMENTS
AND INFORMATION**

**7 Publication of information concerning functions etc.
of agencies**

S. 7(1)
amended by
No. 58/1993
s. 17(1).

(1) The responsible Minister of an agency, other than a council, shall—

S. 7(1)(a)
amended by
No. 58/1993
s. 5(1)(a)(b).

(a) cause to be published as soon as practicable after the commencement of this Part in a form approved by the Minister administering this Act—

- (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, bodies and persons outside the government administration in relation to the formulation of policy in, or the administration of, the agency;
- (ii) a statement of the categories of documents that are maintained in the possession of the agency;
- (iii) a statement of the material that has been prepared by the agency under this Part for publication or for inspection by members of the public, and the places at which a person may inspect or obtain that material;
- (iv) a statement listing the literature available by way of subscription services or free mailing lists;

- (v) a statement of the procedure to be followed by a person when a request for access to a document is made to the agency;
 - (vi) a statement designating by name the officer or officers responsible within each agency for the initial receipt of, and action upon, requests for access to a document;
 - (vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are a part of, or that have been established for the purpose of advising, the agency, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection; and
 - (viii) if the agency maintains a library or reading room that is available for public use—a statement of that fact including details of the address and hours of opening of the library or reading room; and
- (b) during the year commencing on 1 January next following the publication, in respect of an agency, of the statements under paragraph (a) that are the statements first published under that paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statements.
- (1A) Subsection (1) applies to an agency that is a council as if the reference to the responsible Minister of an agency were a reference to the council.

S. 7(1)(b)
substituted by
No. 58/1993
s. 5(2).

S. 7(1A)
inserted by
No. 58/1993
s. 17(2).

Freedom of Information Act 1982
No. 9859 of 1982

Part II—Publication of Certain Documents and Information

s. 7

S. 7(2)
amended by
No. 58/1993
s. 5(3).

- (2) The approved forms under subsection (1) shall be appropriate for the purposes of assisting members of the public to exercise effectively their rights under this Act.
- (3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

S. 7(4)
substituted by
No. 58/1993
s. 5(4),
amended by
No. 58/1993
s. 17(3).

- (4) The information to be published in accordance with this section by an agency, that is a department or prescribed agency, must be published by including it—
- (a) in the annual report of the agency to the responsible Minister of the agency; or
- (b) if there is no such annual report—in the annual report of the department, or a department administered, or part of which is administered, by the responsible Minister of the agency.

S. 7(4A)
inserted by
No. 58/1993
s. 5(4).

- (4A) Subsection (1) applies to an agency that becomes an agency on or after the commencement of section 5 of the **Freedom of Information (Amendment) Act 1993** as if references in that subsection to the commencement of this Part were references to the day on which that agency became an agency.

S. 7(4AA)
inserted by
No. 58/1993
s. 17(4).

- (4AA) The information to be published in accordance with this section by an agency that is a council must be published—
- (a) by including it in the annual report of the council under the **Local Government Act 1989**; or
- (b) separately, as soon as practicable after the commencement of section 17 of the **Freedom of Information (Amendment)**

Act 1993 and at intervals of not less than 12 months.

- (5) Subject to subsection (6) of this section, section 15 shall not be read so as to require the responsible Minister of an agency to include in a statement of the categories of documents prepared under subsection (1)(a)(ii) information relating to any document in the custody of the Public Record Office of Victoria.
- (6) The statement of the categories of documents that are maintained in the possession of the Public Record Office of Victoria prepared under subsection (1)(a)(ii) by the Minister administering the **Public Records Act 1973** shall include a statement of the categories of all documents that are maintained in the custody of the Public Record Office of Victoria, including those documents to which section 15 applies.
- (7) The prescribed form of publication of the statement of the categories of documents prepared under subsection (1)(a)(ii) may be such as to allow for categories of documents that are maintained in common by more than one agency to be listed in a single statement prepared under subsection (1)(a)(ii) by the Minister administering the **Public Records Act 1973**.
- (8) For the purposes of this section, "statement of the categories of documents prepared under subsection (1)(a)(ii)" includes statements prepared under subsection (1)(b).

8 Certain documents to be available for inspection and purchase

- (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use or guidance of, or are used or may be used by, the agency or its officers—

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- (a) in making decisions or recommendations, or in providing advice to persons outside the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled, eligible or subject, being—
- (i) documents containing interpretations or particulars of Acts or schemes administered by the agency, not being particulars contained in another Act; or
 - (ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the agency, or similar documents containing rules, policies, guidelines, practices or precedents; and
- (b) in enforcing Acts or schemes administered by the agency where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of the Acts or schemes.
- (2) The principal officer of an agency shall—
- (a) as from a date as soon as practicable after the commencement of this Part—
 - (i) cause copies of all documents to which this section applies in respect of the agency to be made available for inspection and for purchase by members of the public; and
 - (ii) cause to be published in the prescribed form a statement (which may take the form of an index) specifying the documents that are, at the time of preparation of the statement, so

available and the place or places where copies may be inspected and may be purchased; and

- (b) within twelve months after the publication of the first statement under paragraph (a) and thereafter at intervals of twelve months, cause to be published in a prescribed form statements bringing up to date the information contained in the previous statement or statements.
- (3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).
- (4) A document from which exempt matter has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt matter being disclosed, the nature of the matter excluded.
- (5) Notwithstanding the opinion of the principal officer that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt matter being disclosed, the principal officer of the agency shall cause that fact to be published.

- (6) An agency that comes into existence after the commencement of this Part shall comply—
- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the agency comes into existence and not later than twelve months after that day; and
 - (b) with the provisions of subsection (2)(b) as if the reference to "first publication" in that paragraph were a reference to first publication in compliance with this subsection.

9 Unpublished documents not to prejudice public

Where under section 8 any agency is required to make available a document containing rule, policy, guideline or practice relating to a function of the agency and the agency fails—

- (a) to make the document available; or
- (b) to include the document in a statement required to be published under section 8—

before the time at which the person did or omitted to do any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired) that person shall not be subject to any detriment by reason only of the application of that rule, policy, guideline or practice, where with knowledge of that rule, policy, guideline or practice he could have avoided the detriment lawfully.

10 Cabinet register

- (1) The Premier shall cause to be published on a continuing basis a register containing—
- (a) details of the terms of all decisions made by the Cabinet after the date of commencement of this Act;

- (b) the reference number assigned to each such decision; and
 - (c) the date on which the decision was made.
- (2) The information referred to in subsection (1) shall be entered on the register at the discretion of the Premier.

11 Statement of certain documents in possession of agencies to be published

- (1) This section applies, in respect of an agency other than a council, to any document that is—
- (a) a report, or a statement containing the advice or recommendations, of a prescribed body or organization established within the agency;
 - (b) a report, or a statement containing the advice or recommendations, of a body or organization established outside the agency by or under an Act, or by the Governor in Council or a Minister, for the purpose of submitting a report or reports, providing advice or making recommendations to the agency or to the responsible Minister of that agency;
 - (c) a report, or a statement containing the advice or recommendations, of an inter-departmental committee whose membership includes an officer of the agency;
 - (d) a report, or a statement containing the advice or recommendations, of a committee established within the agency to submit a report, provide advice or make recommendations to the responsible Minister of that agency or to another officer of the agency who is not a member of the committee;

S. 11(1)
amended by
No. 58/1993
s. 18(a).

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- (e) a report (including a report concerning the results of studies, surveys or tests) prepared for the agency by a scientific or technical expert, whether employed within the agency or not, including a report expressing the opinion of such an expert on scientific or technical matters;
 - (f) a report prepared for the agency by a consultant who was paid for preparing the report;
 - (g) a report prepared within the agency and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed government policy, programme or project;
 - (h) a report on the performance or efficiency of the agency, or of an office, division or branch of the agency, whether the report is of a general nature or concerns a particular policy, programme or project administered by the agency;
 - (i) a report containing final plans or proposals for the re-organisation of the functions of the agency, the establishment of a new policy, programme or project to be administered by the agency, or the alteration of an existing policy, programme or project administered by the agency, whether or not the plans or proposals are subject to approval by an officer of the agency, another agency, the responsible Minister of the agency or the Cabinet;

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- (j) a statement prepared within the agency and containing instructions submitted to the Parliamentary Counsel for the drafting of a Bill;
 - (k) a submission prepared within the agency (other than by the responsible Minister of the agency) for presentation to the Cabinet;
 - (l) a report of a test carried out within the agency on a product for the purpose of government equipment purchasing;
 - (m) an environmental impact statement prepared within the agency; and
 - (n) a valuation report prepared for the agency by a valuer, whether or not the valuer is an officer of the agency.
- (2) The principal officer of an agency shall—
- (a) cause to be published in the prescribed form as soon as practicable after the commencement of this Part a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of Part I of this Act and are in the possession of the agency;
 - (b) within twelve months after first publication of the statement required under paragraph (a) and thereafter at intervals of twelve months, cause to be published in a prescribed form statements bringing up to date the information contained in the previous statement or statements.
- (3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be referred to in a statement published in accordance with subsection (2)(a), if

the fact of the existence of the document cannot be referred to in the statement without exempt matter being disclosed.

- (4) An agency that comes into existence after the commencement of this Part shall comply—
- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the agency comes into existence and not later than twelve months after that day; and
 - (b) with the provisions of subsection (2)(b) as if the reference to "first publication" in that paragraph were a reference to first publication in compliance with this subsection.

12 Notices to require specification of documents in statements

S. 12(1)
amended by
No. 58/1993
s. 18(b).

- (1) A person may serve upon the principal officer of an agency, other than a council a notice in writing stating that, in the opinion of the person, a statement published by the principal officer under sections 8(2)(a) or (b) or 11(2)(a) or (b) does not specify a document as described in section 8(1) or 11(1) that was required to be specified in the statement.
- (2) The principal officer shall—
- (a) make a decision within 21 days of receiving a notice as to whether to specify in the next statement to be published under section 8(2)(b) or section 11(2)(b), as the case may be, the document referred to in the notice; and
 - (b) cause the person to be given notice in writing of his decision.

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- (3) Where the decision is adverse to the person's claim, the notice shall—
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and
 - (b) inform the person of—
 - (i) the person's right to apply to the Tribunal for review of the decision; and
 - (ii) the time within which the application for review must be made.
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S. 12(3)(b)
substituted by
No. 6/2012
s. 7.

PART III—ACCESS TO DOCUMENTS

13 Right of access

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

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

14 Part not to apply to certain documents

- (1) A person is not entitled to obtain access under this Part to—
 - (a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge;
 - (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by an agency; or
 - (c) a document that is available for public inspection in the Public Record Office of Victoria;
 - (d) a document which is stored for preservation or safe custody in the Public Record Office of Victoria being a document which is a duplicate of a document of an agency.
- (2) A document, other than a document of an agency, that has been placed in the custody of the State Library of Victoria or the Public Record Office of Victoria by a person (including a Minister or former Minister) shall be available to the public in accordance with this Act, subject to any

restrictions or conditions imposed by the person at the time the document was placed in the custody of the State Library or the Public Record Office, as the case may be.

- (3) Subsection (2) shall apply to a document, other than a document of an agency, which was placed in the custody of the State Library of Victoria or the Public Record Office of Victoria before the date of commencement of this section as if that document had been so placed in the custody of the institution concerned after the date of commencement of this section.

15 Documents in the Public Record Office

- (1) For the purpose of this Act, a document, other than a document of the kind referred to in section 14(1)(c), that has been placed in the custody of the Public Record Office of Victoria by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.
- (2) Notwithstanding subsection (1), records of a Royal Commission that are in the custody of the Public Record Office shall, for the purpose of this Act, be deemed to be in the possession of the department administered by the Attorney-General.
- (3) Section 9, section 10, section 10AA and sections 23(a) and 23(c) of the **Public Records Act 1973** shall not be read so as to prevent a person from obtaining access to a document in the custody of the Public Record Office of Victoria to which that person may obtain access in accordance with this Act.

S. 15(2)
amended by
No. 38/1999
s. 6(a).

S. 15(3)
amended by
No. 30/2006
s. 23(1).

S. 15(4)
repealed by
No. 30/2006
s. 23(2).

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- (5) Subsection (1) shall apply to a document which was placed in the custody of the Public Record Office of Victoria before the date of commencement of this section as if the document had been so placed after the date of commencement of this section.
- (6) For the purposes of this Act, a document that has been placed by an agency (including the Public Record Office) in a place of deposit appointed in accordance with section 14 of the **Public Records Act 1973** shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related if that agency concerned is entitled to access to the document.
- (7) Subsection (6) shall apply to a document which was placed in a place of deposit before the commencement of this section as if the document had been so placed after the date of commencement of this section.

16 Access to documents apart from Act

- (1) Ministers and agencies shall administer this Act with a view to making the maximum amount of government information promptly and inexpensively available to the public.
- (2) Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

17 Requests for access

- (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister shall make a request in writing to the agency or Minister as the case requires for access to the document.
- (2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.
- (2A) A request must be accompanied by a fee of 2 fee units.
- (2B) An application fee may be waived or reduced, whether or not the fee has been paid, if the payment of the fee would cause hardship to the applicant.
- (3) It is the duty of an agency or Minister, as the case may be, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate agency or Minister, to make a request in a manner that complies with this section or to direct a request to the appropriate agency or Minister.

S. 17(2A)
inserted by
No. 58/1993
s. 6,
amended by
No. 10/2004
s. 15(Sch. 1
item 9).

S. 17(2B)
inserted by
No. 58/1993
s. 6.

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- (4) Where a request in writing is made to an agency or Minister for access to a document, the agency or Minister, as the case may be, shall not refuse to comply with the request on the ground that the request does not comply with subsection (2), without first giving the applicant a reasonable opportunity of consultation with the agency with a view to the making of a request in a form that does comply with that subsection.

18 Transfer of requests

- (1) A request for access to a document may be made to any agency which has a copy of the document.
- (2) Where—
- (a) a request is made to an agency for access to a document; and
 - (b) (i) the document is not in the possession of that agency but is in the possession of another agency; or
 - (ii) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made—

the agency to which the request is made may promptly transfer the request to the other agency and inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.

- (3) Where a request is transferred to an agency in accordance with this section, it shall be deemed to be a request made to that agency and received at the time at which the transfer was made or fourteen days after the date of the original request, whichever is the shorter period.

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- (4) Where a request is made to the Public Record Office of Victoria for access to a document of a kind referred to in section 15(1), the Public Record Office may promptly transfer the request to the agency deemed, by virtue of that subsection, to be the agency in possession of the document.
- (5) In this section where appropriate *agency* includes a Minister.

19 Requests involving use of computers etc.

- (1) Where—
- (a) a request is duly made to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and
 - (c) the agency could produce a written document containing the information in discrete form by—
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency—
- the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) In this section where appropriate *agency* includes a Minister.

20 Access to documents to be given on request

- (1) Subject to this Act, where—
- (a) a request is duly made by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is granted has been paid—

the person shall be given access to the document in accordance with this Act.

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

21 Time within which formal requests to be decided

An agency or Minister shall take all reasonable steps to enable an applicant to be notified of a decision on a request as soon as practicable but in any case not later than 45 days after the day on which the request is received by or on behalf of the agency or Minister.

22 Charges for access to documents

- (1) Any charge (not being an application fee) that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given, shall be calculated by an agency in accordance with the following principles or, where those principles require, shall be waived—
- (a) a charge shall only cover the time that would be spent by the agency in conducting a routine search for the document to which access is requested, and shall not cover additional time, if any, spent by the agency in searching for a document that was lost or misplaced;

S. 22(1)
amended by
No. 58/1993
s. 7(1).

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- (b) the charge in relation to time made under paragraph (a) shall be fixed on an hourly rate basis;
 - (c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the material to which access is granted;
 - (d) a charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents, in providing a written transcript of the words recorded or contained in documents, or in providing a written document in accordance with section 19;
 - (e) a charge shall not be made for the time spent by an agency in examining a document to determine whether it contains exempt matter, or in deleting exempt matter from a document;
 - (f) a charge shall not be made for producing for inspection a document referred to in sections 8(1) or 11(1), whether or not that document has been specified in a statement published in accordance with sections 8(2) or 11(2) respectively;
 - (g) a charge shall be waived if the request is a routine request for access to a document;
 - (h) a charge, other than a charge for the reasonable costs incurred by an agency in making copies of documents, in making a written transcript of the words recorded or contained in documents or in making a written document in accordance with section 19, shall not be made if—

S. 22(1)(h)
substituted by
No. 58/1993
s. 7(2).

s. 22

- (i) the applicant's intended use of the document is a use of general public interest or benefit; or
- (ii) the applicant is a member of the Legislative Council or of the Legislative Assembly of Victoria; or
- (iii) the request is for access to a document containing information relating to the personal affairs of the applicant; and

S. 22(1)(i)
substituted by
No. 58/1993
s. 7(2).

- (i) a charge under paragraph (d) shall be waived if the applicant is impecunious and the request is for access to a document containing information relating to the personal affairs of the applicant.

S. 22(1)(i)
repealed by
No. 58/1993
s. 7(2).

* * * * *

S. 22(1A)
inserted by
No. 2/2001
s. 101(1)(b).

- (1A) Without limiting any other power to make regulations conferred by this Act, a power conferred by this Act to make regulations for or in relation to the making of charges for access to documents may, in the case of a document referred to in section 23(1)(e)—
 - (a) prescribe different amounts according to the form in which access is given;
 - (b) prescribe amounts by reference to the usual fee of a person for a consultation of a comparable duration.

S. 22(2)
amended by
No. 58/1993
s. 7(3).

- (2) Subject to subsections (3), (4) and (5), payment of a charge shall not be required before the time at which the agency has notified the applicant of the decision to grant access to a document.

- (3) If in the opinion of an agency a charge may exceed \$25 or such greater amount as is prescribed by regulation the agency shall notify the applicant of its opinion and inquire whether the applicant wishes to proceed with the request.
- (4) In a notice given to an applicant under subsection (3), an agency must inform the applicant that the applicant will be required to pay a deposit of a prescribed amount or at a prescribed rate on account of the charge.
- (5) Where an agency has required an applicant to pay a deposit on account of a charge, the applicant's request shall, for the purposes of section 21 be deemed to have been received by the agency on the day on which the applicant has paid the deposit.
- (6) Where an agency has required an applicant to pay a deposit on account of a charge, the agency shall, if requested to do so by the applicant, discuss with the applicant practicable alternatives for altering the request or reducing the anticipated charge, including reduction of the charge if the applicant shall waive, either conditionally or unconditionally, the need for compliance by the agency with the time limits specified in section 21.
- (7) A notice under subsection (3) from an agency to an applicant shall—
 - (a) state the name and designation of the person who calculated the charge; and
 - (b) inform the applicant of—
 - (i) his right to apply for a review of the charge;
 - (ii) the authority to which the application for review should be made; and

S. 22(4)
amended by
No. 58/1993
s. 7(4).

(iii) the time within which the application for review must be made.

(8) Subject to this section, the charges set by the regulations shall be uniform for all agencies and there shall be no variation of charges as between different applicants in respect of like services.

(9) In this section where appropriate *agency* includes a Minister.

23 Forms of access

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

(a) a reasonable opportunity to inspect the document;

(b) provision by the agency or Minister of a copy of the document;

(ba) publication to an Internet site established by the Minister for that purpose in accordance with the regulations;

S. 23(1)(ba)
inserted by
No. 6/2012
s. 8.

(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

S. 23(1)(c)
amended by
No. 43/2012
s. 3(Sch.
item 20.1).

(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document;

S. 23(1)(d)
amended by
Nos 2/2001
s. 101(1)(c),
43/2012
s. 3(Sch.
item 20.2).

(e) in the case of a document containing health information relating to the person, by a way referred to in section 28(1), (2) or (3) of the

S. 23(1)(e)
inserted by
No. 2/2001
s. 101(1)(c).

Health Records Act 2001 in the manner provided in section 29(1) of that Act.

- (2) Subject to this section and to sections 19 and 25, where the applicant has requested access in a particular form, access shall be given in that form.
- (3) If the form of access requested by the applicant—
 - (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his functions, as the case may be;
 - (b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or
 - (c) would involve an infringement of copyright subsisting in a person other than the State, or, in the case of an application to a council, other than the council—

S. 23(3)(c)
amended by
No. 58/1993
s. 19(1).

access in that form may be refused and access given in another form.

- (4) If an applicant is given access to a document in a form that is different from the form of access requested by the applicant, the applicant shall not be required to pay a charge that is greater than the charge that would have been payable if access had been given in the form requested by the applicant.
- (5) Access under subsection (1)(a) in respect of a document to which section 15(1) applies shall be given by affording the applicant a reasonable opportunity to inspect the document on the premises of the Public Record Office of Victoria.
- (6) In respect of a document which is more than twenty years old or which is in the custody of the Public Record Office of Victoria, the Keeper of Public Records may determine that the granting of

S. 23(6)
amended by
No. 38/1999
s. 6(a).

access in any one or more but not all of the forms referred to in subsection (1) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate.

- (7) Where the Keeper of Public Records has made a determination in accordance with subsection (6), access shall not be granted in the form or forms specified in the determination but may be given in any of the remaining forms provided under subsection (1).

24 Deferment of access

- (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned if the document has been prepared—

(a) for presentation to the Parliament;

(aa) for presentation to a council;

(b) for release to the Press; or

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

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

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

S. 24(1)(aa)
inserted by
No. 58/1993
s. 19(2)(a).

S. 24(1)(c)
amended by
No. 58/1993
s. 19(2)(b).

24A Repeated requests

S. 24A
inserted by
No. 58/1993
s. 8.

- (1) An agency or Minister dealing with a request under Part III for access to documents or under Part V for the correction or amendment of information may refuse to grant access to documents or to amend a record in accordance with the request, without having caused the processing of the request to have been undertaken or at any later time, if the agency or Minister is satisfied that—
 - (a) the request is made by, or on behalf of, a person who, on at least one previous occasion, has made a request to the agency or Minister, or to a predecessor of the agency or Minister, for access to the same documents or the same information; and
 - (b) the request was refused and the Tribunal, on reviewing the decision to refuse the request, confirmed the decision; and
 - (c) there are not reasonable grounds for making the request again.
- (2) An agency or Minister must give notice of a refusal under subsection (1) and must inform the applicant of—
 - (a) the right to apply for review of the decision; and
 - (b) the authority to which the application for review should be made; and
 - (c) the time within which the application for review must be made.

s. 25

25 Deletion of exempt matter or irrelevant material

Where—

S. 25
(Heading)
inserted by
No. 30/2006
s. 19(2).

S. 25(a)
amended by
No. 30/2006
s. 19(3)(a).

(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document or that to grant the request would disclose information that would reasonably be regarded as irrelevant to the request;

S. 25(b)
amended by
No. 30/2006
s. 19(3)(b).

(b) it is practicable for the agency or Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document or a document that would not disclose such information (as the case requires); and

(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy—

the agency or Minister shall grant access to such a copy of the document.

S. 25A
inserted by
No. 58/1993
s. 9.

25A Requests may be refused in certain cases

(1) The agency or Minister dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the agency or Minister is satisfied that the work involved in processing the request—

(a) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or

(b) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions.

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- (2) Subject to subsection (3) but without limiting the matters to which the agency or Minister may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relates, the agency or Minister is to have regard to the resources that would have to be used—
- (a) in identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister; or
 - (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used—
 - (i) in examining the documents; or
 - (ii) in consulting with any person or body in relation to the request; or
 - (c) in making a copy, or an edited copy, of the documents; or
 - (d) in notifying any interim or final decision on the request.
- (3) The agency or Minister is not to have regard to any maximum amount, specified in regulations, payable as a charge for processing a request of that kind.
- (4) In deciding whether to refuse, under subsection (1), to grant access to documents, an agency or Minister must not have regard to—
- (a) any reasons that the person who requests access gives for requesting access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for requesting access.

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- (5) An agency or Minister may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document if—
- (a) it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents; and
 - (b) either—
 - (i) it is apparent from the nature of the documents as so described that no obligation would arise under section 25 in relation to any of those documents to grant access to an edited copy of the document; or
 - (ii) it is apparent, from the request or as a result of consultation by the agency or Minister with the person making the request, that the person would not wish to have access to an edited copy of the document.
- (6) An agency or Minister must not refuse to grant access to a document under subsection (1) unless the agency or Minister has—
- (a) given the applicant a written notice—
 - (i) stating an intention to refuse access; and
 - (ii) identifying an officer of the agency or a member of staff of the Minister with whom the applicant may consult with a view to making the request in a form

that would remove the ground for refusal; and

- (b) given the applicant a reasonable opportunity so to consult; and
 - (c) as far as is reasonably practicable, provided the applicant with any information that would assist the making of the request in such a form.
- (7) For the purposes of section 21, the period commencing on the day an applicant is given a notice under subsection (6)(a) and ending on the day the applicant confirms or alters the request following the consultation referred to in subsection (6) is to be disregarded in the computation of the 45 day period referred to in section 21.

S. 25A(7)
amended by
No. 38/1999
s. 6(b).

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S. 25A(8)–(10)
repealed by
No. 6/2012
s. 9.

26 Decision to be made by authorized person

- (1) A decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) Where a request is made to an agency for a document, and no arrangements in respect of documents of that type have been made and published under the regulations, a decision on that request shall, for the purpose of enabling an application for review to be made to the Tribunal,

S. 26(1)
amended by
No. 58/1993
s. 10(a)(b).

S. 26(2)
amended by
No. 10/155
s. 67(1)(b).

be deemed to have been made by the principal officer of the agency.

27 Reasons etc. to be given

S. 27(1)
amended by
No. 84/1990
s. 3(a).

(1) Where, in relation to a request for access to a document of an agency or an official document of a Minister, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the agency or Minister shall cause the applicant to be given notice in writing of the decision, and the notice shall—

S. 27(1)(b)
amended by
No. 84/1990
s. 3(b).

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to an agency, state the name and designation of the person giving the decision;

S. 27(1)(c)
amended by
No. 30/2006
s. 19(4).

- (c) where access is given to a document in accordance with section 25 state that the document is a copy of a document from which exempt or irrelevant matter has been deleted;

S. 27(1)(d)(iii)
amended by
No. 2/2001
s. 101(1)(d)(i).

- (d) inform the applicant of—
 - (i) his right to apply for a review of the decision;
 - (ii) the authority to which the application for review should be made; and
 - (iii) the time within which the application for review must be made;

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- (da) where the decision relates to a refusal to grant access to a document containing health information on the ground referred to in section 36 of the **Health Records Act 2001**, inform the applicant of the time within which—
- (i) a written notice may be given under section 38(1) of the **Health Records Act 2001** nominating a health service provider for the purposes of Division 3 of Part 5 of that Act;
- (ii) an application for a review of the decision may be made under Division 1 of Part VI of this Act;
- (iii) an application for conciliation may be made under Division 2 of Part VI of this Act;
- (db) where the decision relates to a refusal to grant access to a document containing health information on a ground other than the ground referred to in section 36 of the **Health Records Act 2001**, inform the applicant of the time within which—
- (i) an application for a review of the decision may be made under Division 1 of Part VI of this Act;
- (ii) if applicable, an application for conciliation may be made under Division 2 of Part VI of this Act;
- (e) where, in the case of a decision of an agency, the decision does not relate to a request for access to a document that if it existed would be, an exempt document under section 28, 29A or 31 but the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be
- S. 27(1)(da) inserted by No. 2/2001 s. 101(1)(d)(ii).
- S. 27(1)(da)(ii) amended by No. 6/2012 s. 10(1)(a).
- S. 27(1)(da)(iii) amended by No. 6/2012 s. 10(1)(b).
- S. 27(1)(db) inserted by No. 2/2001 s. 101(d)(ii).
- S. 27(1)(db)(i) amended by No. 6/2012 s. 10(2)(a).
- S. 27(1)(db)(ii) amended by No. 6/2012 s. 10(2)(b).
- S. 27(1)(e) amended by Nos 84/1990 s. 3(c), 58/1993 s. 11(a), 7/2003 s. 44(1), 6/2012 s. 10(3).

located, inform the applicant of his right to complain to the Freedom of Information Commissioner.

- (2) In a notice under subsection (1), an agency or Minister—
- (a) is not required to include any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document;
 - (b) if the decision relates to a request for access to a document that is an exempt document under section 28, 29A or 31 or that, if it existed, would be an exempt document under section 28, 29A or 31, may state the decision in terms which neither confirm nor deny the existence of any document.

S. 27(2)(b)
substituted by
No. 84/1990
s. 3(d),
amended by
Nos 58/1993
s. 11(b),
7/2003
s. 44(2).

Pt 3A
(Heading and
ss 27A–27G)
inserted by
No. 38/1999
s. 3,
repealed by
No. 57/1999
s. 4.

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PART IV—EXEMPT DOCUMENTS

27A Interpretation

A provision of this Part by virtue of which documents referred to in it are exempt documents—

S. 27A
inserted by
No. 30/2006
s. 21.

- (a) is not to be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents; and
- (b) is not to be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

28 Cabinet documents

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

- (a) the official record of any deliberation or decision of the Cabinet;
- (b) a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by the Cabinet;
- (ba) a document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet;
- (c) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (ba); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

S. 28(1)(b)
substituted by
Nos 58/1993
s. 12(1),
57/1999 s. 5.

S. 28(1)(ba)
inserted by
No. 58/1993
s. 12(1).

S. 28(1)(c)
substituted by
No. 58/1993
s. 12(1).

Freedom of Information Act 1982
No. 9859 of 1982
Part IV—Exempt Documents

s. 28

S. 28(3)
substituted by
No. 58/1993
s. 12(2).

(2) Subsection (1) shall cease to apply to a document brought into existence after the day of commencement of this section when a period of ten years has elapsed since the last day of the year in which the document came into existence.

(3) Subsection (1) does not apply to a document referred to in a paragraph of that subsection to the extent that the document contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet.

S. 28(4)
substituted by
No. 58/1993
s. 12(2),
amended by
No. 30/2006
s. 22(1).

(4) For the purposes of this Act, a certificate signed by the Secretary to the Department of Premier and Cabinet certifying that a document as described in a request is or would, if it existed, be one of a kind referred to in a specified paragraph of subsection (1), establishes that the document is or would, if it existed, be an exempt document.

S. 28(5)
substituted by
No. 58/1993
s. 12(2),
amended by
No. 6/2012
s. 11(1).

(5) The Freedom of Information Commissioner may not conduct an investigation in respect of a certificate under subsection (4) or a question whether a document is of a kind referred to in subsection (1) or a decision to sign such a certificate.

S. 28(6)
inserted by
No. 58/1993
s. 12(2).

(6) Nothing in Part V applies to a document to which a certificate under subsection (4) applies.

S. 28(7)
inserted by
No. 58/1993
s. 12(2).

(7) In this section—

(a) **Cabinet** includes a committee or sub-committee of Cabinet;

(b) a reference to a document includes a reference to a document whether created before or after the commencement of section 12 of the **Freedom of Information (Amendment) Act 1993**.

29 Documents containing matter communicated by any other State

A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure—

- (a) would prejudice relations between the State and the Commonwealth or any other State or Territory; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of the government of another country or of the Commonwealth or of any other State or Territory to the government of the State or Territory or a person receiving a communication on behalf of that government.

29A Documents affecting national security, defence or international relations

S. 29A
inserted by
No. 7/2003
s. 42.

- (1) A document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to, cause damage to—
 - (a) the security of the Commonwealth or any State or Territory; or
 - (b) the defence of the Commonwealth; or
 - (c) the international relations of the Commonwealth.

- (1A) Without limiting subsection (1), a document is an exempt document if it is a document created (whether before or after the commencement of section 22 of the **Terrorism (Community Protection) (Further Amendment) Act 2006**) by the Counter Terrorism Coordination and Emergency Management Department of the police force of Victoria.

S. 29A(1A)
inserted by
No. 30/2006
s. 22(2).

s. 29A

S. 29A(1B)
inserted by
No. 30/2006
s. 22(2).

(1B) Without limiting subsection (1), a document is an exempt document if—

- (a) its disclosure would, or could reasonably be expected to, endanger the security of any premises within the meaning of the **Terrorism (Community Protection) Act 2003**; or
- (b) it is a risk management plan prepared under section 29 of the **Terrorism (Community Protection) Act 2003**; or
- (c) it is a document containing, or containing a general outline of, a training exercise prepared under section 33 of the **Terrorism (Community Protection) Act 2003**; or
- (d) it is a document that is or contains a report or advice on the adequacy of a plan referred to in paragraph (b) or of a document or exercise referred to in paragraph (c) or may otherwise disclose details of any such plan or exercise—

whether the document is created before or after the commencement of section 22 of the **Terrorism (Community Protection) (Further Amendment) Act 2006**.

S. 29A(2)
amended by
No. 30/2006
s. 22(3).

- (2) For the purposes of this Act, a certificate signed by a Department Head or the Chief Commissioner of Police, certifying that a document as described in a request is or would, if it existed, be one of a kind referred to in a specified paragraph of subsection (1) or (1B) or in subsection (1A), establishes that the document is or would, if it existed, be an exempt document.

- (3) The Freedom of Information Commissioner may not conduct an investigation in respect of a certificate under subsection (2) or a question whether a document is of a kind referred to in subsection (1), (1A) or (1B) or a decision to sign such a certificate.
- (4) In this section a reference to a document includes a reference to a document whether created before or after the commencement of section 42 of the **Terrorism (Community Protection) Act 2003**.

S. 29A(3)
amended by
Nos 30/2006
s. 22(4),
6/2012
s. 11(2).

30 Internal working documents

- (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—
- (a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers, or an officer and a Minister, in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (b) would be contrary to the public interest.
- (1A) Subsection (1) applies in relation to a council as if for "Minister" there were substituted "member of the council".
- (2) In the case of a document of the kind referred to in section 8(1), the matter referred to in subsection (1)(a) of this section does not include matter that is provided for the use or guidance of, or is used or may be used for, the purpose of making decisions or recommendations, or enforcing enactments or schemes, referred to in section 8(1).

S. 30(1A)
inserted by
No. 58/1993
s. 20.

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- (3) This section does not apply to a document by reason only of purely factual material contained in the document.
 - (4) This section does not apply to the record of a final decision, order or ruling given in the exercise of an adjudicative function, and any reason which explains that decision, order or ruling.
 - (5) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 27 shall state the public interest considerations on which the decision is based.
 - (6) Subsection (1) shall cease to apply to a document brought into existence after the day of commencement of this section when a period of ten years has elapsed since the last day of the year in which the document came into existence.

31 Law enforcement documents

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—
 - (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

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- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.
- (2) This section does not apply to any document that is—
- (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
 - (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;
 - (c) a document containing any general outline of the structure of any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (d) a report on the degree of success achieved in any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (e) a report prepared in the course of routine law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law;

(f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation—

if it is in the public interest that access to the document should be granted under this Act.

S. 31(3)
amended by
No. 30/2006
s. 22(5).

(3) Notwithstanding anything to the contrary in this section, a document is an exempt document if it is a document created by the Bureau of Criminal Intelligence or (whether before or after the commencement of section 22 of the **Terrorism (Community Protection) (Further Amendment) Act 2006**) by the Intelligence and Covert Support Department of the police force of Victoria.

32 Documents affecting legal proceedings

S. 32(1)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 26).

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

(2) A document of the kind referred to in section 8(1) is not an exempt document by virtue of subsection (1) of this section by reason only of the inclusion in the document of a matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).

33 Document affecting personal privacy

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

- (2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.
- (2A) An agency or Minister, in deciding whether the disclosure of a document under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person, must take into account, in addition to any other matters, whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.
- (3) Where a request by a person other than a person referred to in subsection (2) is made to an agency or Minister for access to a document containing information relating to the personal affairs of any person (including a deceased person) and the agency or Minister decides to grant access to the document, the agency or Minister (as the case may be) shall if practicable notify the person who is the subject of that information (or in the case of a deceased person, that person's next-of-kin) of the decision and of the right of appeal against the decision provided by section 50(3) to the person or, in the case of a deceased person, to the person's next-of-kin.
- (4) If—
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains health information concerning the person making the request; and
- S. 33(2A) inserted by No. 57/1999 s. 6(1).**
- S. 33(3) amended by No. 6/2012 s. 12(1).**
- S. 33(4) amended by No. 23/1994 s. 118(Sch. 1 item 22.1), substituted by No. 2/2001 s. 101(2).**

- (b) the principal officer or the Minister, as the case may be, believes on reasonable grounds that the provision of the health information would pose a serious threat to the life or health of the person—

the principal officer or Minister must not give access to the document so far as it contains that information and—

- (c) the procedure set out in Division 3 of Part 5 of the **Health Records Act 2001** applies as if the refusal of access were a refusal under section 26 of that Act; and
- (d) the document is an exempt document.
- (5) Where but for this subsection the principal officer of an agency to which the provisions of subsection (4) may apply would not be a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student), the agency shall appoint a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) to be the principal officer of the agency for the purposes of subsection (4).
- (6) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be an exempt document by virtue of this section.
- (7) Nothing in this section shall be construed so as to affect the procedures for access to adoption records contained in the **Adoption Act 1984**.

S. 33(5)
amended by
Nos 10087
s. 3(1)(Sch. 1
item 91),
23/1994
s. 118(Sch. 1
item 22.2),
97/2005
s. 182(Sch. 4
item 22),
13/2010
s. 51(Sch.
item 25).

S. 33(7)
amended by
No. 10150
s. 3(1).

(8) Nothing in this section shall be construed so as to affect the procedures for access to information kept in a register maintained under Division 1 of Part 6 of the **Assisted Reproductive Treatment Act 2008**.

S. 33(8) inserted by No. 10163 s. 34 (as amended by No. 86/1987 s. 4(6)), amended by No. 10262 s. 4, substituted by No. 38/1999 s. 4(1), amended by No. 76/2008 s. 155.

(9) In this section—

information relating to the personal affairs of any person includes information—

S. 33(9) inserted by No. 38/1999 s. 4(2), substituted by No. 57/1999 s. 6(2).

- (a) that identifies any person or discloses their address or location; or
- (b) from which any person's identity, address or location can reasonably be determined.

34 Documents relating to trade secrets etc.

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

S. 34(1) substituted by No. 57/1999 s. 7(1).

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

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

S. 34(2) amended by No. 57/1999 s. 7(2).

- (a) whether the information is generally available to competitors of the undertaking;
- (b) whether the information would be exempt matter if it were generated by an agency or a Minister;
- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—

and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

S. 34(3)
amended by
No. 57/1999
s. 7(3).

- (3) Prior to making a determination under subsection (1) as to whether the disclosure of information would expose an undertaking unreasonably to disadvantage an agency or Minister shall notify the undertaking which has supplied the relevant document or documents that the agency or Minister has received a request for access to the document and shall—

- (a) seek the undertaking's view as to whether disclosure should occur; and
- (b) notify the undertaking where the agency after consultation has decided to disclose the document and in such a case notify the undertaking of the right to make an application for review of the decision provided by section 50(3A).

S. 34(3)(b)
amended by
Nos 10155
s. 67(1)(c),
6/2012
s. 12(2).

- (4) A document is an exempt document if—
- (a) it contains—
 - (i) a trade secret of an agency; or
 - (ii) in the case of an agency engaged in trade or commerce—information of a business, commercial or financial nature—

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

S. 34(4)(a)
amended by
No. 57/1999
s. 7(4).

35 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister, and—
 - (a) the information would be exempt matter if it were generated by an agency or a Minister; or
 - (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
- (2) This section does not apply to information—
 - (a) acquired by an agency or a Minister from a business, commercial or financial undertaking; and
 - (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

S. 36
amended by
No. 58/1993
s. 21(1)(a).

36 Disclosure contrary to public interest

- (1) A document is an exempt document if—
 - (a) in the case of documents of a department or prescribed authority its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Victoria, including but not limited to, revealing consideration of a contemplated movement in bank interest rates or in sales

S. 36(1)(a)
amended by
No. 58/1993
s. 21(1)(b).

tax, the imposition of credit controls, the sale or acquisition of land or property by the Crown, urban re-zoning, the formulation of land use and planning controls and the formulation of State imposts; or

- (b) in the case of documents of a department or prescribed authority its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use or guidance of, officers of an agency on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personnel management and assessment interests of the Crown or of an agency.

S. 36(1)(b)
amended by
No. 58/1993
s. 21(1)(c).

- (2) A document is an exempt document if—

- (a) in the case of a document of a council, its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of the municipal district, including but not limited to, revealing consideration of a contemplated movement in rates, fees, charges, interest charges or other levies, the sale or acquisition of land or property by the council, urban re-zoning, the formulation of land use and planning controls and the formation of imposts; or
- (b) in the case of a document of a council, its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided

S. 36(2)
inserted by
No. 58/1993
s. 21(2).

for the use of guidance of, officers of a council on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personnel management and assessment interests of the council.

37 Certain documents arising out of companies and securities legislation

- (1) A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—
- (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, another State or an authority of the Commonwealth or another State;
 - (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
 - (c) a document furnished to the National Companies and Securities Commission or the Australian Securities and Investments Commission by the Commonwealth or another State or an authority of the Commonwealth or another State and relating solely to the functions of the Commission in relation to the law of the Commonwealth or another State or the laws of two or more States.

S. 37(1)(c)
amended by
No. 44/2001
s. 3(Sch.
item 50).

- (2) This section has effect as if the Northern Territory were a State.

38 Documents to which secrecy provisions of enactments apply

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

38A Council documents

- (1) A document is an exempt document if it is—

S. 38A
inserted by
No. 58/1993
s. 22.

- (a) the official record of any deliberation or decision of a closed meeting or part of a closed meeting (other than the official record under section 89(3) of the **Local Government Act 1989** in the minutes of a meeting of the reason for closing a meeting to the public);
- (b) a document which, in the opinion of the principal officer of a council, has been prepared for, or will be used for, consideration of any matter by the council at a meeting, that in the opinion of the principal officer, is likely to be a closed meeting of the council;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b);

S. 38A(1)(a)
amended by
No. 29/2006
s. 3(Sch. 1
item 12.1).

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- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of a closed meeting (other than the official record under section 89(3) of the **Local Government Act 1989** in the minutes of a meeting of the reason for closing a meeting to the public) or of a meeting that is likely to be a closed meeting;
- (e) a document that is ancillary to, associated with or accompanying a document referred to in paragraph (a), (b), (c) or (d).
- (2) Subsection (1) does not apply to a document by reason of the fact that it was submitted to a closed meeting of a council for its consideration or is proposed to be so submitted if it was not brought into existence for the purpose of submission for consideration by a closed meeting.
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PART V—AMENDMENT OF PERSONAL RECORDS

39 Person may request amendment of record

Where a document containing information relating to the personal affairs of a person (including a deceased person) is released to the person who is the subject of that information (or in the case of a deceased person, that person's next-of-kin) that person shall be entitled to request the correction or amendment of any part of that information where it is inaccurate, incomplete, out of date, or where it would give a misleading impression.

40 Form of request for amendment of record

A request under section 39—

- (a) shall be in writing;
- (b) shall specify an address to which a notice under section 43 may be sent to the person making the request; and
- (c) shall give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister is incomplete, incorrect, out of date or misleading and shall specify the amendments that the claimant wishes to be made.

41 Agency or Minister may amend record

Where an agency to which or Minister to whom a request is made under section 39 decides to amend the record of information to which the request relates, the agency or Minister may, in its or his discretion, make the amendment either by altering the record or by adding an appropriate notation to the record.

42 Notation on record

Where an agency or Minister amends a record by adding a notation to the record, the notation shall—

- (a) specify the respects in which the information is incomplete, incorrect, out of date or misleading; and
- (b) in a case where the information is claimed to be out of date—set out such information as is required to bring the information up to date.

43 Time within which agency or Minister must notify claimant

Where a request is made to an agency or Minister under section 39, the agency or Minister shall take all reasonable steps to enable the claimant to be notified of a decision on the request as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.

44 When section 26 to apply

Section 26 applies in relation to a decision in respect of a request made under section 39.

45 When section 27 to apply

Section 27 applies in relation to a decision made under this Part refusing to amend a record in like manner as it applies in relation to a decision made under Part III refusing to grant access to a document in accordance with a request made in accordance with section 17.

46 Where request refused

Where—

- (a) an agency or Minister refuses to amend a record pursuant to a request under section 39;

S. 45
amended by
No. 6/2012
s. 12(3).

(b) the person who made the request applies to the Tribunal for a review of the decision; and

S. 46(b)
amended by
No. 10155
s. 67(1)(d)(i).

(c) the Tribunal affirms the decision—

S. 46(c)
amended by
No. 10155
s. 67(1)(d)(ii).

the person who made the request may, by notice in writing, require the agency or Minister to add to the record a notation—

(d) specifying the respects in which the information is claimed by him to be incomplete, incorrect, out of date or misleading; and

(e) in a case where the information is claimed by him to be out of date—setting out such information as is claimed to be required to bring up to date or complete the information.

47 Notice to be added to the record

Where a notice is given to an agency or Minister under section 46—

(a) the agency or Minister shall ensure that a notation as required by the notice is added to the record; and

(b) if any information in the part of the record to which the notation relates is disclosed to a person (including another agency or Minister) by the agency or Minister, the agency or Minister shall ensure that there is also furnished to that person, with the document containing the information, a statement—

(i) stating that the person to whom the information relates claims that the information is incomplete, incorrect,

out of date or misleading, as the case may be; and

(ii) giving particulars of the notation—

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

48 Notice may be given to persons who received the information prior to commencement of section

Nothing in this Part is intended to prevent or discourage agencies or Ministers from giving particulars of a notation added to a record in accordance with section 47(a) to a person (including any agency or Minister) to whom information contained in the record to which the notation relates was furnished before the commencement of this section.

49 How corrections or amendments are made

Where a request for correction or amendment under section 39 has been acceded to by an agency, the correction or amendment may take the form of a notation of the original document but no correction or amendment shall be made which has the effect of deleting or expunging the information which has been corrected or amended or of destroying the document except with the concurrence of the Keeper of Public Records.

PART VI—REVIEW OF DECISIONS

**Division 1—Review by Freedom of Information
Commissioner**

**Pt 6 Div. 1
(Heading and
ss 49A–49P)
inserted by
No. 6/2012
s. 13.**

**49A Applications to Freedom of Information
Commissioner for review**

**S. 49A
inserted by
No. 6/2012
s. 13.**

- (1) An applicant may apply to the Freedom of Information Commissioner for review of—
 - (a) a decision of an agency refusing to grant access to a document in accordance with a request; or
 - (b) a decision under section 24 by an agency deferring the provision of access to a document; or
 - (c) a decision of an agency not to waive or reduce an application fee under section 17, whether or not the fee has already been paid by the applicant.
- (2) A person who is the subject of information in a document referred to in section 39 (or, in the case of a deceased person, that person's next-of-kin) may apply to the Freedom of Information Commissioner for a review of a decision by an agency not to amend the document pursuant to a request under section 39.
- (3) An application cannot be made under this section in relation to a decision of a Minister or the principal officer of an agency.

s. 49B

- (4) An application cannot be made under this section in relation to a decision of an agency refusing to grant access to a document on the basis that the document is claimed to be exempt under section 28 or 29A.
- (5) If the decision of an agency relates to a document that is claimed to be exempt under section 28 or 29A and also to another separate document that is not so exempt, an application can be made under this section in relation to the decision of the agency to the extent that it relates to the other separate document.

S. 49B
inserted by
No. 6/2012
s. 13.

49B Time for applying for review

- (1) Subject to this section, an application by a person to the Freedom of Information Commissioner for review of a decision under this Division must be made within 28 days after the day on which notice in writing of the decision is given to the person.
- (2) If the application for review relates to a decision to refuse to grant a person access to a document containing health information on the ground referred to in section 36 of the **Health Records Act 2001**, the application must be made within 70 days after the day on which notice in writing of the decision is given to the person.

S. 49C
inserted by
No. 6/2012
s. 13.

49C Form of application

An application for review under this Division must—

- (a) be in writing; and
- (b) identify—
 - (i) the agency concerned; and
 - (ii) the decision to be reviewed; and
- (c) include any other prescribed information.

49D Notice of application for review

The Freedom of Information Commissioner must notify the principal officer of the agency to which the application relates of the application for review.

S. 49D
inserted by
No. 6/2012
s. 13.

49E Parties to review

The parties to a review under this Division are—

- (a) the applicant; and
- (b) the agency whose decision is being reviewed.

S. 49E
inserted by
No. 6/2012
s. 13.

49F Review of decision

Subject to this Division, the Freedom of Information Commissioner may review a decision of an agency on an application under section 49A.

S. 49F
inserted by
No. 6/2012
s. 13.

49G Freedom of Information Commissioner may determine not to accept application or may dismiss review

- (1) The Freedom of Information Commissioner may determine not to accept an application for review or dismiss a review at any stage if—
- (a) the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith; or
 - (b) the applicant has failed to co-operate with the review without reasonable excuse; or
 - (c) the Commissioner considers that the review would be more appropriately dealt with by the Tribunal; or
 - (d) the Commissioner considers that a review is not appropriate in the circumstances; or

S. 49G
inserted by
No. 6/2012
s. 13.

s. 49H

- (e) the Commissioner is unable to contact the applicant following reasonable attempts to do so.
- (2) The Freedom of Information Commissioner may dismiss a review if the applicant agrees in writing to the review being dismissed.
- (3) Unless subsection (1)(e) applies, the Freedom of Information Commissioner must give notice to the applicant and the agency if the Commissioner decides not to accept an application for review or to dismiss a review.
- (4) The notice must set out the reasons for the decision.

S. 49H
inserted by
No. 6/2012
s. 13.

49H Procedure on review

- (1) The Freedom of Information Commissioner must conduct a review in a timely, efficient and fair manner, with as little formality and technicality as possible.
- (2) The Freedom of Information Commissioner must give each party to the review a reasonable opportunity to make submissions in writing in relation to the review.
- (3) Subject to this section, the Freedom of Information Commissioner is bound by the rules of natural justice in conducting a review.

S. 49I
inserted by
No. 6/2012
s. 13.

49I Agency must assist Freedom of Information Commissioner

The agency that made the decision that is the subject of the review must assist the Freedom of Information Commissioner to undertake the review.

**49J Effect of delay by Freedom of Information
Commissioner in relation to requests**

S. 49J
inserted by
No. 6/2012
s. 13.

- (1) This section applies if the Freedom of Information Commissioner—
- (a) has not, within the required period, completed the review of a decision of an agency referred to in section 49A(1)(a) or (b) or (2); and
 - (b) has not, within the required period, made a determination under section 49G with respect to the application for review or the review.
- (2) At the end of the required period, the Freedom of Information Commissioner is taken, for the purposes of an application to the Tribunal for review, to have made a decision—
- (a) refusing to grant access to the document in accordance with the request; or
 - (b) deferring the provision of access to a document; or
 - (c) not to amend the document pursuant to a request under section 39—
- as the case requires.
- (3) In this section the *required period* is 30 days after the application for review by the Freedom of Information Commissioner is received or any longer period agreed to in writing by the applicant.

49K Preliminary inquiries

S. 49K
inserted by
No. 6/2012
s. 13.

The Freedom of Information Commissioner may make preliminary inquiries and consult with the parties to the review to determine—

- (a) the material facts and issues in relation to the review; and

- (b) whether the matter can be resolved by agreement between the parties.

S. 49L
inserted by
No. 6/2012
s. 13.

49L Referral back to agency for fresh decision

- (1) After making preliminary inquiries, the Freedom of Information Commissioner, with the agreement of the applicant, may refer the matter that is the subject of the application back to the agency for reconsideration if it appears to the Commissioner reasonably likely that the agency will be able to make a fresh decision in a way that is satisfactory to the applicant and in accordance with law.
- (2) The fresh decision must be made within 45 days of the referral under subsection (1) unless the agency and the Freedom of Information Commissioner agree in writing to another period.
- (3) The required period for completing the review under section 49J is suspended during the period referred to in subsection (2).
- (4) The agency must notify the Freedom of Information Commissioner within 3 business days after the end of the period referred to in subsection (2) that—
 - (a) the fresh decision has been made; or
 - (b) that the fresh decision has not been made.
- (5) If the agency makes a fresh decision, it must revoke the earlier decision.
- (6) If the agency makes a fresh decision and the applicant agrees in writing with the decision, the Freedom of Information Commissioner must dismiss the review.
- (7) Subject to subsection (9), if the agency makes a fresh decision and the applicant does not agree with the decision—

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- (a) the Freedom of Information Commissioner must recommence the review on the basis of the fresh decision; and
- (b) the required period for the Commissioner to complete the review under section 49J is extended to the end of 30 days after the earlier of—
- (i) the date on which the notice under subsection (4) is given; or
 - (ii) the end of the period within which the notice under subsection (4) is required to be given.
- (8) Subject to subsection (9), if the agency does not make a fresh decision within the period referred to in subsection (2)—
- (a) the Freedom of Information Commissioner must recommence the review; and
- (b) the required period for the Freedom of Information Commissioner to complete the review under section 49J is extended to the end of 14 days after the earlier of—
- (i) the date on which the notice under subsection (4) is given; or
 - (ii) the end of the period within which the notice under subsection (4) is required to be given.
- (9) A review cannot be completed under this section in relation to a fresh decision if the decision is to refuse to grant access to a document on the basis that the document is claimed to be exempt under section 28 or 29A.

S. 49M
inserted by
No. 6/2012
s. 13.

49M Effect of fresh decision of agency during review

- (1) An agency may revoke a decision on a request and make a fresh decision during a review under this Part, otherwise than under section 49L.
- (2) The agency must notify the Freedom of Information Commissioner in writing of that fresh decision.
- (3) If the agency makes a fresh decision and the applicant agrees with the decision, the Freedom of Information Commissioner must dismiss the review.
- (4) Subject to subsection (5), if the agency makes a fresh decision and the applicant does not agree with the decision—
 - (a) the Freedom of Information Commissioner must complete the review on the basis of the fresh decision; and
 - (b) the required period for the Freedom of Information Commissioner to complete the review under section 49J is taken to commence on the date on which the agency notifies the Commissioner in writing of the fresh decision.
- (5) A review cannot be completed under this section in relation to a fresh decision if the decision is to refuse to grant access to a document on the basis that the document is claimed to be exempt under section 28 or 29A.
- (6) An agency may make a fresh decision under this section only once during a review under this Part.

49N Freedom of Information Commissioner may facilitate a negotiated agreement

S. 49N
inserted by
No. 6/2012
s. 13.

- (1) The Freedom of Information Commissioner may facilitate an agreement between the parties in relation to a decision that is the subject of a review under this Division.
- (2) The agreement must be in writing.
- (3) The Freedom of Information Commissioner may make a decision on the review on the basis of the agreement.

49O Referral of matter to a relevant authority

S. 49O
inserted by
No. 6/2012
s. 13.

- (1) This section applies if the Freedom of Information Commissioner identifies a matter arising out of or in relation to a review as being within the jurisdiction of a relevant authority.
- (2) The Freedom of Information Commissioner, after consulting with the relevant authority, may refer the matter to the relevant authority if the Commissioner considers it appropriate to do so.
- (3) The referral of a matter under this section does not affect the role of the Freedom of Information Commissioner in conducting a review under this Act.
- (4) The Freedom of Information Commissioner must notify the applicant in writing of a referral of a matter under this section that affects the interests of the applicant.
- (5) In this section *relevant authority* means a person or body prescribed by the regulations for the purposes of this section.

S. 49P
inserted by
No. 6/2012
s. 13.

49P Decision on review

- (1) After conducting a review of a decision of an agency, the Freedom of Information Commissioner must make a fresh decision on the original application.
- (2) The decision of the Freedom of Information Commissioner has the same effect as a decision of the agency.
- (3) The Freedom of Information Commissioner must give the parties notice in writing of the decision setting out—
 - (a) the reasons for the decision; and
 - (b) the rights of the parties to apply to the Tribunal for review under section 50.
- (4) A decision requiring an agency to release a document does not take effect until—
 - (a) 60 days after notice of the decision is given; or
 - (b) if an application is made to the Tribunal within that 60 day period, until a decision is made on that review.
- (5) If the Freedom of Information Commissioner makes a decision to disclose a document that is claimed to be exempt under section 33 or 34, the Commissioner must notify any person or undertaking who or which has a right to make an application for review of the decision under section 50(3) or (3A) (as the case requires) of the existence of that right.

Division 2—Conciliation by Health Services Commissioner

Pt 6 Div. 2
(Heading and
s. 49Q)
inserted by
No. 6/2012
s. 13.

49Q Conciliation by Health Services Commissioner

S. 49Q
inserted by
No. 6/2012
s. 13.

- (1) This section applies if a person has a right to apply for a review under section 49A of a decision of an agency in relation to a document containing health information relating to the person.
- (2) Subject to subsection (4), the person may apply to the Health Services Commissioner for conciliation under Division 3 of Part 6 of the **Health Records Act 2001** instead of making an application under section 49A of this Act.
- (3) Division 3 of Part 6 of the **Health Records Act 2001** (except section 63) applies to the conciliation as if it were a conciliation of a complaint made under that Act.
- (4) An application may be made under subsection (2) in relation to a document that is an exempt document referred to in section 32, 33 or 38 but an application cannot be made under that subsection in relation to any other exempt document under this Act.
- (5) An application under subsection (2) must be made within—
 - (a) 70 days, in the case of a decision referred to in section 27(1)(da); or
 - (b) 28 days, in any other case—after the day on which notice in writing of the decision is given to the applicant in accordance with section 27.

- (6) If the Health Services Commissioner has attempted unsuccessfully to conciliate a matter on an application under this Division, he or she must give notice in writing to—
- (a) the applicant; and
 - (b) the principal officer of the agency or the Minister responsible for the agency to whom the request was made; and
 - (c) the Freedom of Information Commissioner.

Pt 6 Div. 3
(Heading)
inserted by
No. 6/2012
s. 14.

Division 3—Review by the Tribunal

S. 50
(Heading)
inserted by
No. 6/2012
s. 15(1).

50 Applications for review by the Tribunal

S. 50(1)
repealed by
No. 10155
s. 67(1)(e)(i),
new s. 50(1)
inserted by
No. 6/2012
s. 15(2).

- (1) Subject to this section, an applicant may apply to the Tribunal for review of—
- (a) a decision of the principal officer of an agency or a Minister refusing to grant access to a document in accordance with a request;
 - (b) a decision of the Freedom of Information Commissioner refusing to grant access to a document in accordance with a request;
 - (c) a decision of the Freedom of Information Commissioner deferring the provision of access to a document;
 - (d) a decision of an agency refusing to grant access to a document in accordance with a request, if the Freedom of Information Commissioner has made a determination under section 49G(1) in respect of that request;

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- (e) a decision of an agency refusing to grant access to a document that is claimed to be exempt under section 28 or 29A;
- (f) a decision under section 24 by the principal officer of an agency or a Minister deferring the provision of access to a document;
- (g) a decision as to the amount of a charge that is required to be paid before access to a document is granted, whether or not the charge has already been paid by the applicant, if the Freedom of Information Commissioner has certified that the matter is one of sufficient importance for the Tribunal to consider.
- (2) A person who served a notice under section 12(1) may apply to the Tribunal for a review of a decision under section 12(2)(a) not to specify a document in a statement.
- (3) A person who is the subject of information in a document referred to in section 33(3) (or, in the case of a deceased person, that person's next-of-kin) may apply to the Tribunal for a review of a decision to disclose that document.
- (3A) A business, commercial or financial undertaking may apply to the Tribunal for a review of a decision to disclose a document referred to in section 34 contrary to the undertaking's view as obtained under section 34(3).
- (3B) A person who is the subject of information in a document referred to in section 39 (or, in the case of a deceased person, that person's next-of-kin) may apply to the Tribunal for a review of a
- S. 50(2)**
amended by
Nos 10155
s. 67(1)(e)
(ii)–(iv), 2/2001
s. 101(1)(e),
substituted by
No. 6/2012
s. 15(2).
- S. 50(3)**
repealed by
No. 10155
s. 67(1)(e)(v),
new s. 50(3)
inserted by
No. 6/2012
s. 15(2).
- S. 50(3A)**
inserted by
No. 6/2012
s. 15(2).
- S. 50(3B)**
inserted by
No. 6/2012
s. 15(2).

decision by the Freedom of Information Commissioner or a principal officer of an agency or a Minister not to amend the document pursuant to a request under section 39.

S. 50(3C)
inserted by
No. 6/2012
s. 15(2).

(3C) An applicant who has applied to the Health Services Commissioner under Division 2 for a conciliation in relation to a decision of an agency refusing to grant access to a document in accordance with a request may apply to the Tribunal for a review of the decision of the agency if the matter is not conciliated under that Division.

S. 50(3D)
inserted by
No. 6/2012
s. 15(2).

(3D) An agency may apply to the Tribunal for review of a decision of the Freedom of Information Commissioner under section 49P.

S. 50(3E)
inserted by
No. 6/2012
s. 15(2).

(3E) The applicant must notify the Freedom of Information Commissioner in writing as soon as practicable of an application for review under subsection (1)(b) or (c) in relation to a failure of the Commissioner to make a decision within the relevant time.

S. 50(3F)
inserted by
No. 6/2012
s. 15(2).

(3F) An agency must notify the Freedom of Information Commissioner in writing as soon as practicable of an application for review under subsection (3D).

S. 50(3G)
inserted by
No. 6/2012
s. 15(2).

(3G) An application for review of a decision cannot be made under this section by a person if—

- (a) a fresh decision has been made by the agency under Division 1 and the person has accepted the fresh decision; or
- (b) the decision was made by the Freedom of Information Commissioner in accordance with section 49N.

S. 50(3H)
inserted by
No. 6/2012
s. 15(2).

(3H) A person is not entitled to apply to the Tribunal for review of a decision in relation to which subsection (1), (3) or (3A) applies if the person has made or caused to be made an application for

review of the decision to the Visitor of a University unless—

- (a) the Visitor has declined to conduct that review; or
 - (b) a period of 30 days has elapsed since the day on which that application for review was made.
- (4) On the hearing of an application for review the Tribunal shall have, in addition to any other power, the same powers as an agency or a Minister in respect of a request, including power to decide that access should be granted to an exempt document (not being a document referred to in section 28, section 29A, section 31(3), or in section 33) where the Tribunal is of opinion that the public interest requires that access to the document should be granted under this Act.
- (5) Where a certificate has been given in respect of a document under section 28(4), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining whether a document has been properly classified as an exempt document within the meaning of section 28.
- (5A) Where a certificate has been given in respect of a document under section 29A(2), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining the question whether there exist reasonable grounds for the claim that the document is an exempt document under section 29A.
- (6) The Tribunal may refuse to review a decision of an agency or Minister to refuse the request of a person for access to a document if the Tribunal is satisfied that it has previously reviewed a decision

S. 50(4)
amended by
Nos 10155
s. 67(1)(e)
(vi)(vii), 7/2003
s. 44(3).

S. 50(5)
amended by
No. 10155
s. 67(1)(e)(vii).

S. 50(5A)
inserted by
No. 7/2003
s. 44(4).

S. 50(6)
inserted by
No. 58/1993
s. 13.

of the agency or Minister to refuse access to the same document or the same information.

S. 51
amended by
Nos 10155
s. 67(1)(f),
2/2001
s. 101(1)(f)(g),
substituted by
No. 6/2012
s. 16.

51 Freedom of Information Commissioner may be called on to assist Tribunal

- (1) The Tribunal, on its own motion or on the application of the Freedom of Information Commissioner, may call on the Commissioner to assist the Tribunal in respect of a review.
- (2) Despite anything to the contrary in the **Victorian Civil and Administrative Tribunal Act 1998**, the Freedom of Information Commissioner is not and cannot be joined as a party to a review under section 50 unless it is a review of a decision of the Freedom of Information Commissioner as the principal officer of the office of the Freedom of Information Commissioner.

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S. 51A
inserted by
No. 2/2001
s. 102,
repealed by
No. 6/2012
s. 17.

52 Time for applying for review

S. 52
amended by
Nos 10155
s. 67(1)(g),
52/1998
s. 311(Sch. 1
item 32.2),
2/2001
s. 101(1)(h),
substituted by
No. 6/2012
s. 18.

- (1) An application to the Tribunal under section 50(1)(a), (e), (f) or (g) must be made within 60 days from the day on which notice in writing of a decision on the request is given to the applicant.
- (2) An application to the Tribunal under section 50(2) must be made within 60 days from the day on which notice in writing of the decision under section 12(2)(a) is given to the person.
- (3) An application to the Tribunal under section 50(3) or (3A) must be made within 60 days from the day on which notice in writing of a decision to

disclose the document is given to the person or undertaking, as the case requires.

- (4) An application to the Tribunal under section 50(3B) in relation to a decision by the principal officer of an agency or a Minister must be made within 60 days from the day on which notice in writing of the decision is given to the applicant.
- (5) An application to the Tribunal under section 50(1)(b) or (c) must be made within 60 days from the day on which notice in writing of the decision of the Freedom of Information Commissioner on the review is given to the applicant under Division 1.
- (6) An application to the Tribunal under section 50(3B) in relation to a decision by the Freedom of Information Commissioner must be made within 60 days from the day on which notice in writing of the decision of the Freedom of Information Commissioner on the review is given to the applicant under Division 1.
- (7) An application to the Tribunal under section 50(1)(d) must be made within 60 days from the day on which notice in writing of a decision of the Freedom of Information Commissioner under section 49G is given to the applicant.
- (8) An application to the Tribunal under section 50(3C) must be made within 60 days from the day on which notice in writing of the decision under Division 2 is given to the applicant.
- (9) An application to the Tribunal under section 50(3D) must be made within 60 days from the day on which notice in writing of the decision under Division 1 is given to the agency.

53 Reviews where decisions delayed

S. 53(1)
amended by
No. 10155
s. 67(1)(h)(i)(ii).

- (1) Subject to this section, where—
- (a) a request has been made to an agency or Minister;
 - (b) the time period provided in section 21 or section 43 as the case may be has elapsed; and
 - (c) notice of a decision on the request has not been received by the applicant—

the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 50, be deemed to have made, on the last day of the relevant time period, a decision refusing to grant access to the document.

S. 53(2)(3)
amended by
No. 10155
s. 67(1)(h)(i),
repealed by
No. 6/2012
s. 19.

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S. 53(4)
amended by
No. 10155
s. 67(1)(h)(ii),
repealed by
No. 6/2012
s. 19.

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S. 53(5)
amended by
No. 10155
s. 67(1)(h)
(i)–(iii).

- (5) Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally heard the application, a decision, other than a decision to grant, without deferment, access to the document in accordance with the request, is given, the Tribunal may, at the request of the applicant, treat the application as extending to an application for review of that decision in accordance with this Part.

- (6) Before further hearing an application made by virtue of this section, the Tribunal, may on the application of the agency or Minister concerned, make an order allowing further time to the agency or Minister to deal with the request. **S. 53(6) amended by No. 10155 s. 67(1)(h)(i)(ii).**
- (7) The Tribunal may make an order under subsection (6) subject to such conditions as the Tribunal thinks fit, including a condition that if a decision is made during the further time to grant access to a document any charge that, under the regulations, is required to be paid before access is granted shall be reduced or waived. **S. 53(7) amended by No. 10155 s. 67(1)(h)(i).**
- (8) In this section a reference to a request includes a reference to a notice served upon a principal officer under section 12(1).

53AA Procedure where Tribunal determines that there do not exist reasonable grounds for claim under section 29A

S. 53AA inserted by No. 7/2003 s. 43.

- (1) If, after hearing a proceeding referred to in clause 29C(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, the Tribunal determines in relation to a document in respect of which a certificate under section 29A(2) is in force that there do not exist reasonable grounds for the claim that the document is an exempt document under section 29A, the Tribunal must notify the responsible Minister in writing of that determination.
- (2) The responsible Minister must, within 28 days after being notified under subsection (1), make a decision to revoke, or not to revoke, the certificate.

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- (3) If the responsible Minister makes a decision under subsection (2) to revoke a certificate—
- (a) any claim made in the certificate is to be taken, for the purposes of this Act, to have been withdrawn; and
 - (b) the Minister must immediately inform the applicant of the existence or non-existence of the document to which the certificate related.
- (4) If the Minister makes a decision under subsection (2) not to revoke a certificate, he or she must—
- (a) cause written notice of the decision to be given to the applicant immediately; and
 - (b) cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is given.
- (5) A notice under subsection (4) must state the Minister's findings on any material question of fact, the material on which those findings are based, the reasons for the decision and attach a copy of the Tribunal's notification to the responsible Minister of its determination.
- (6) The Minister is not required to include in a notice under subsection (4) matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document under section 28, 29A, 31(3) or 33.
- (7) The Minister is not required to include in a notice under subsection (4) information as to the existence or non-existence of a document or the existence or non-existence of a state of fact if that information would, if included in a document of an agency, cause that document to be an exempt document under section 28, 29A, 31(3) or 33.

- (8) Nothing in this section is to be taken to imply that a certificate under section 29A(2) cannot be revoked otherwise than in accordance with this section.

53A Notification of reviews regarding documents affecting personal privacy

S. 53A
inserted by
No. 57/1999
s. 8.

- (1) If—

S. 53A(1)
amended by
No. 6/2012
s. 20(c).

- (a) an agency or Minister or the Freedom of Information Commissioner makes a decision refusing to grant access to a document; and
- (b) a reason for the decision is that the document is an exempt document under section 33(1) because its disclosure would involve the unreasonable disclosure of information relating to the personal affairs of a person; and
- (c) an application is made to the Tribunal under section 50(1)(a), (b) or (d) for review of the decision—

S. 53A(1)(a)
amended by
No. 6/2012
s. 20(a).

S. 53A(1)(c)
amended by
No. 6/2012
s. 20(b).

the agency or Minister or the Freedom of Information Commissioner (as the case requires), as soon as practicable after being notified of the application, must, if practicable, give written notice in accordance with subsection (2) to the person to whom the information relates.

- (2) A notice under subsection (1) must—

- (a) inform the person to whom it is directed of their right to intervene in the review; and
- (b) request the person to inform the Tribunal, within 21 days after the day on which the notice was given, whether or not the person intends to intervene.

- (3) If—
- (a) the person does not intervene in the review;
and
 - (b) the Tribunal orders that access be granted to the document—
- the Tribunal must, if practicable, give notice of the order to the person.
- (4) An order referred to in subsection (3)(b) does not take effect until 28 days after the day on which it is made.

S. 54
substituted by
No. 10155
s. 67(1)(i),
amended by
Nos 52/1998
s. 311(Sch. 1
item 32.3),
6/2012 s. 21.

54 Parties

For the purposes of this Division and of the application of the **Victorian Civil and Administrative Tribunal Act 1998** in respect of proceedings under this Division—

- (a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and
- (b) in the case of proceedings by virtue of section 53, the agency or Minister to which or to whom the request was made shall be a party to the proceedings.

55 Onus

S. 55(1)
amended by
No. 6/2012
s. 21.

- (1) In proceedings under this Division by virtue of section 12, the principal officer upon whom the notice was served has the onus of establishing that the document concerned is not a document as described in section 8(1) or section 11(1).

S. 55(2)
amended by
Nos 10155
s. 67(1)(j),
6/2012 s. 21.

- (2) In proceedings under this Division, the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant.

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S. 55A
inserted by
No. 10155
s. 67(1)(k),
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.4).

56 Inspection of exempt documents by Tribunal

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S. 56(1)
amended by
No. 10155
s. 67(1)(l)(i)(ii),
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.5).

(2) Subject to subsection (3) and to any order made by the Tribunal under section 51(2) of the **Victorian Civil and Administrative Tribunal Act 1998**, the Tribunal shall do all things necessary to ensure that any document produced to the Tribunal in proceedings under this Act that is claimed to be an exempt document, or the contents of that document, is not disclosed to any person other than a member of the Tribunal as constituted for the proceedings, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, and to ensure the return of the document to the defendant at the conclusion of the proceedings.

S. 56(2)
amended by
Nos 10155
s. 67(1)(l)(i)(iii),
52/1998
s. 311(Sch. 1
item 32.6(a)
(i)(ii)).

(3) The Tribunal may make any orders as it thinks fit having regard to the nature of the proceedings, including where the applicant is represented by an Australian lawyer (within the meaning of the **Legal Profession Act 2004**), an order that the contents of a document produced to the Tribunal that is claimed to be an exempt document be disclosed to that practitioner.

S. 56(3)
amended by
Nos 10155
s. 67(1)(l)(i)
(iii)–(v),
52/1998
s. 311(Sch. 1
item 32.6(b)
(i)(ii)),
substituted by
No. 18/2005
s. 18(Sch. 1
item 45).

Freedom of Information Act 1982
No. 9859 of 1982
Part VI—Review of Decisions

s. 56

S. 56(4)
amended by
No. 10155
s. 67(1)(l)(i),
repealed by
No. 10155
s. 67(1)(l)(vi),
new s. 56(4)
inserted by
No. 18/2005
s. 18(Sch. 1
item 45).

(4) In making an order under subsection (3), the Tribunal must be guided by the principle that the contents of a document should not normally be disclosed except in accordance with an order of the Tribunal under section 51(2) of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 56(5)
amended by
Nos 10155
s. 67(1)(l)(i),
7/2003
s. 44(5),
6/2012
s. 12(4).

(5) Where an application under section 50(1) or (3D) relates to a document or part thereof in relation to which disclosure has been refused on the grounds specified in section 28, section 29A, or section 31, the Tribunal may, if it regards it as appropriate to do so, announce its findings in terms which neither confirm nor deny the existence of the document in question.

S. 56(6)
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.5).

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S. 57
amended by
Nos 10155
s. 67(1)(m),
35/1996
s. 453(Sch. 1
item 34),
repealed by
No. 6/2012
s. 22.

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S 58
amended by
No. 10155
s. 67(1)(n)
(i)–(iii),
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.7).

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59 Tribunal may reduce or waive charges

S. 59
amended by
No. 10155
s. 67(1)(o)(i)(ii),
substituted by
No. 52/1998
s. 311(Sch. 1
item 32.8).

- (1) In a review under this Division, the Tribunal may order that any charge payable under this Act or the regulations in respect of access to a document be reduced or waived.
- (2) The Tribunal cannot make an order under subsection (1) if it confirms the decision the subject of the review.

S.59(1)
amended by
No. 6/2012
s. 21.

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S. 60
amended by
No. 10155
s. 67(1)(p),
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.9).

61 Disciplinary action

- (1) Where the Tribunal, at the completion of proceedings under this Act, is of opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in the administration of this Act and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Tribunal shall bring the evidence to the notice of—
 - (a) if the person is the principal officer of a department or prescribed authority—the responsible Minister of that department or prescribed authority; or
 - (aa) if a person is the principal officer of a council—to the council;

S. 61
amended by
Nos 10155
s. 67(1)(q),
38/1999
s. 6(c), 6/2012
s. 23 (ILA
s. 39B(1)).

S. 61(a)
amended by
No. 58/1993
s. 23(1)(a)(b).

S. 61(aa)
inserted by
No. 58/1993
s. 23(1)(c).

Freedom of Information Act 1982
No. 9859 of 1982

s. 61

(b) if the person is an officer of an agency but not the principal officer of that agency—the principal officer of that agency.

S. 61(2)
inserted by
No. 6/2012
s. 23.

(2) In the circumstances set out in subsection (1), the Tribunal must also bring the evidence to the notice of the Freedom of Information Commissioner.

S. 61A
inserted by
No. 10155
s. 67(1)(r),
repealed by
No. 52/1998
s. 311(Sch. 1
item 32.9).

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PART VIA—COMPLAINTS

**Pt 6A
(Heading and
ss 61A–61N)
inserted by
No. 6/2012
s. 24.**

61A Complaints

**New s. 61A
inserted by
No. 6/2012
s. 24.**

- (1) A complaint may be made to the Freedom of Information Commissioner in accordance with this Part about any of the following—
- (a) an action taken or failed to be taken by an agency in the performance or purported performance of the agency's functions and obligations under this Act, including a decision by an agency that a document does not exist or cannot be located;
 - (b) a delay by a Minister in dealing with a request;
 - (c) an action taken or failed to be taken by a Minister in making a decision under section 24 deferring access to a document;
 - (d) an action taken or failed to be taken by a Minister in making a decision to disclose a document that is claimed to be exempt under section 33;
 - (e) an action taken or failed to be taken by a Minister in making a decision to disclose a document that is claimed to be exempt under section 34.
- (2) A complaint must—
- (a) be in writing; and
 - (b) set out the nature of the complaint; and
 - (c) identify the agency or Minister concerned.

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- (3) A person who may make a complaint may include—
- (a) the applicant who has made a request to which the complaint relates; and
 - (b) a person or the next-of-kin of a deceased person, if the matter complained of relates to a decision to disclose a document referred to in section 33 containing information relating to the personal affairs of the person or deceased person; and
 - (c) a business, commercial or financial undertaking, if the matter complained of relates to a decision to disclose a document referred to in section 34 containing information relating to matters of a business, commercial or financial nature of that undertaking.
- (4) A complaint must be made within 60 days after the action or conduct complained of occurred.

S. 61B
inserted by
No. 6/2012
s. 24.

61B Freedom of Information Commissioner may accept or decline to deal with complaint

- (1) The Freedom of Information Commissioner may—
- (a) accept a complaint to the extent that the complaint relates to—
 - (i) a matter referred to in section 61A(1)(a); or
 - (ii) a matter referred to in section 61A(1)(b) to (e); or
 - (b) determine not to accept a complaint or dismiss a complaint at any stage.

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- (2) Without limiting subsection (1)(b), the Freedom of Information Commissioner may determine not to accept a complaint or may dismiss a complaint on any of the following grounds—
- (a) the action or failure by an agency was not in the performance by the agency of its functions or obligations under this Act;
 - (b) the complainant has the right to make a complaint about the action to another body and has not exercised that right;
 - (c) the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
 - (d) the complainant does not have a sufficient interest in the subject-matter of the complaint;
 - (e) the complainant has failed to co-operate with the Commissioner in dealing with the complaint without reasonable excuse;
 - (f) the complaint was made after the end of the time permitted to make a complaint;
 - (g) the Commissioner considers that a complaint is not appropriate in the circumstances;
 - (h) the Commissioner is unable to contact the applicant following reasonable attempts to do so.
- (3) The Freedom of Information Commissioner must dismiss a complaint if the subject-matter of the complaint has been, or could be, dealt with by an application for review by the Freedom of Information Commissioner or the Tribunal.
- (4) If the Freedom of Information Commissioner dismisses a complaint, the Commissioner must give written notice to the complainant setting out the grounds for dismissing the complaint.

s. 61C

S. 61C
inserted by
No. 6/2012
s. 24.

61C Referral of complaint to another body

- (1) This section applies if the Freedom of Information Commissioner considers that a complaint could be dealt with more effectively or appropriately by another person or body who or which has jurisdiction to deal with the complaint.
- (2) If the Freedom of Information Commissioner considers it appropriate to do so, the Commissioner, after consulting with the person or body, may—
 - (a) decline to deal with the complaint; and
 - (b) refer it to the person or body.
- (3) If the Freedom of Information Commissioner refers a complaint to a person or body under this section, the Commissioner must give notice in writing to the complainant.
- (4) The notice must set out the decision of the Freedom of Information Commissioner and the reasons for the decision.

S. 61D
inserted by
No. 6/2012
s. 24.

61D Notice of decision to investigate complaint

- (1) If the Freedom of Information Commissioner accepts a complaint, the Commissioner must notify the principal officer of the agency or the Minister (as the case requires) and the complainant in writing.
- (2) The notice must be accompanied by a copy of the written complaint.
- (3) The Freedom of Information Commissioner may also notify another person of the complaint if the Commissioner believes that the rights or interests of the person may be affected by the subject-matter of the complaint.

61E Agency or Minister to co-operate with Freedom of Information Commissioner

S. 61E
inserted by
No. 6/2012
s. 24.

An agency or Minister to which or whom a complaint relates must co-operate with the Freedom of Information Commissioner in dealing with the complaint.

61F Complaint must be dealt with in private

S. 61F
inserted by
No. 6/2012
s. 24.

The Freedom of Information Commissioner must deal with a complaint in private.

61G Preliminary inquiries and consultation

S. 61G
inserted by
No. 6/2012
s. 24.

- (1) If the Freedom of Information Commissioner accepts a complaint, the Commissioner may—
- (a) conduct preliminary inquiries into the complaint; and
 - (b) consult with the agency to which, or the Minister to whom, the complaint relates and the complainant; and
 - (c) consult with any other person if the Commissioner believes that the rights or interests of the person may be affected by the subject-matter of the complaint—
- in order to determine—
- (d) the material facts and issues in relation to the complaint; and
 - (e) whether the complaint can be resolved informally.
- (2) If the Freedom of Information Commissioner determines that a complaint can be resolved informally, the Commissioner must take reasonable steps to resolve the complaint.

s. 61H

S. 61H
inserted by
No. 6/2012
s. 24.

61H Conciliation of complaint

- (1) If a complaint cannot be resolved informally, the Freedom of Information Commissioner must use his or her best endeavours to conciliate the complaint.
- (2) If a written agreement is reached between the agency or the Minister (as the case requires) and the complainant, the Freedom of Information Commissioner must resolve the complaint in accordance with the agreement.

S. 61I
inserted by
No. 6/2012
s. 24.

61I Procedure for dealing with complaint if conciliation fails

- (1) This section applies if—
 - (a) the Freedom of Information Commissioner has tried but failed to conciliate a complaint; and
 - (b) the Freedom of Information Commissioner is satisfied that there is no reasonable likelihood that the complaint will be resolved by conciliation.
- (2) The Freedom of Information Commissioner must allow the complainant and the agency or the Minister (as the case requires) a reasonable opportunity to make submissions in relation to the complaint, whether orally or in writing.
- (3) The Freedom of Information Commissioner must deal with the complaint with as little formality and technicality as possible.
- (4) If, after considering any submissions, the Freedom of Information Commissioner considers that further information is required in order for the Commissioner to deal with the complaint, the Commissioner may ask the agency or Minister in relation to whom the complaint relates to—

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- (a) produce a document to the Commissioner (other than a document that an agency claims to be exempt under section 28 or 29A); or
 - (b) provide information to the Commissioner or the Commissioner's representative (other than information that if included in a document would make that document exempt under section 28 or 29A).

61J Power to compel prescribed agency to produce documents

S. 61J
inserted by
No. 6/2012
s. 24.

- (1) This section applies if—
 - (a) a prescribed agency fails to produce a document on a request under section 61I; and
 - (b) the Freedom of Information Commissioner considers that the complaint relates to a wilful or flagrant breach of the agency's obligations under this Act; and
 - (c) the Freedom of Information Commissioner considers that it is necessary and appropriate to compel the production of the document in order to deal with the complaint.
- (2) The Freedom of Information Commissioner may by notice (a *production notice*) require the prescribed agency to produce the document to the Commissioner.
- (3) A production notice cannot require production of a document that the prescribed agency claims to be exempt under section 28 or 29A.
- (4) The production notice must state—
 - (a) the documents to be produced; and
 - (b) whether the original of a document is to be produced; and

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- (c) the time (being not less than 14 days after the notice is given) for compliance with the notice (the *compliance period*); and
- (d) the place where the documents are to be produced.
- (5) The Freedom of Information Commissioner must give a copy of a production notice to the principal officer of the prescribed agency.
- (6) Before issuing a production notice, the Freedom of Information Commissioner must consider the most appropriate way for the documents to be produced, taking into account any special requirements needed for the security of the documents.
- (7) The Freedom of Information Commissioner may amend or revoke a production notice during the compliance period set out in the notice.
- (8) Unless the Supreme Court orders otherwise, the prescribed agency must produce the documents in accordance with the production notice within the compliance period set out in that notice.
- (9) If an application is made to the Supreme Court in relation to the issuing of a production notice, the compliance period set out in that notice is suspended for the period between the making and the determination of the application.
- (10) In this section and section 61K, *prescribed agency* means an agency prescribed by the regulations for the purposes of this section and section 61K.

S. 61K
inserted by
No. 6/2012
s. 24.

61K Application to Supreme Court

- (1) If a question arises as to whether the Freedom of Information Commissioner has jurisdiction to issue a production notice to a prescribed agency under section 61J, the Freedom of Information Commissioner or the agency, may apply to the

Supreme Court for a determination of that question.

- (2) The Supreme Court may make any order it considers proper in relation to an application under subsection (1).
- (3) The principal officer of a prescribed agency may, on behalf of the agency—
 - (a) make an application under this section; and
 - (b) be a party to an application by the Freedom of Information Commissioner under this section.
- (4) Nothing in this section limits any application a prescribed agency may make to the Supreme Court in respect of the issuing of a production notice.

61L Outcome of complaint

- (1) After considering the complaint and any submissions and documents received in relation to the complaint, the Freedom of Information Commissioner may make any recommendations to the agency or the Minister (as the case requires) in relation to the complaint that the Commissioner considers appropriate.
- (2) The recommendations may include suggestions for improvements to the policies, procedures and systems of the agency in relation to compliance with this Act.
- (3) The Freedom of Information Commissioner must notify the agency or the Minister (as the case requires) and the complainant and any other party to the complaint of the recommendations of the Commissioner to the agency or Minister in relation to the complaint.

S. 61L
inserted by
No. 6/2012
s. 24.

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- (4) The Freedom of Information Commissioner must not disclose an exempt document or any information that if included in a document would make that document an exempt document in giving notice under this section.
 - (5) If the Freedom of Information Commissioner intends to make a recommendation that relates to, or a comment about, an agency, Minister, person or body, the Commissioner must give the agency, Minister, person or body the opportunity to comment on and respond to the draft recommendation or draft comment before making the recommendation or comment.
 - (6) The Freedom of Information Commissioner must take into account any response received by an agency, Minister, person or body under subsection (5) in making a recommendation or any adverse comment under this section.
 - (7) The Freedom of Information Commissioner must include in the document containing the Commissioner's recommendations and comments, in a manner that fairly, fully and accurately represents the position of the agency, Minister, person or body, any comments received from the agency, Minister, person or body under subsection (5).
 - (8) If the Freedom of Information Commissioner determines that the subject-matter of the complaint requires further investigation and is within the jurisdiction of a person or body who or which is prescribed by the regulations for the purposes of this section, the Commissioner may refer the matter to that body for investigation.

61M Complaints referred by other bodies

The Freedom of Information Commissioner may treat a complaint referred to him or her by—

- (a) the Ombudsman under section 15C of the **Ombudsman Act 1973**; or
- (b) the Victorian Privacy Commissioner under section 34B of the **Information Privacy Act 2000**; or
- (c) the Health Services Commissioner under section 51 of the **Health Records Act 2001**—

as if it were a complaint made under section 61A.

61N Communication of information to appropriate body

The Freedom of Information Commissioner may communicate to a person or body to whom or which a complaint is referred under section 61C any information obtained or received in the course or as a result of the exercise of the functions of the Commissioner under this Part, being information relating to a complaint referred to the person or body under that section.

S. 61M
inserted by
No. 6/2012
s. 24.

S. 61N
inserted by
No. 6/2012
s. 24.

PART VII—MISCELLANEOUS

Division 1—Protections in relation to legal action

Pt 7 Div. 1
(Heading)
inserted by
No. 6/2012
s. 25.

62 Protection against actions for defamation or breach of confidence

- (1) Where access has been given to a document and—
- (a) the access was required or permitted by this Act to be given; or
 - (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 26 or Division 1 of Part VI, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given—

S. 62(1)(b)
amended by
No. 6/2012
s. 26(1).

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

S. 62(1A)
inserted by
No. 58/1993
s. 23(2).

- (1A) Subsection (1) applies in relation to a document of a council as if for "Minister" (except where lastly occurring) there were substituted "council, a member of a council".
- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken for the purpose of the law relating to defamation or breach of confidence to constitute an authorization or approval of the

publication of the document or its contents by the person to whom access is given.

- (3) The provision of access to a document in accordance with—
- (a) a request by the Freedom of Information Commissioner; or
 - (b) a production notice issued by the Freedom of Information Commissioner under Part VIA—

S. 62(3)
inserted by
No. 6/2012
s. 26(2).

does not constitute a waiver of any privilege attaching to that document in relation to its contents.

63 Protection in respect of offences

Where access has been given to a document and—

- (a) the access was required or permitted by this Act to be given; or
- (b) the access was authorized by a Minister or a council, or by an officer having authority, in accordance with section 26 or Division 1 of Part VI, to make decisions in respect of requests in the bona fide belief that the access was required by this Act to be given—

S. 63(b)
amended by
Nos 58/1993
s. 23(3),
6/2012 s. 27.

neither the person authorizing the access nor any other person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorizing or giving of the access.

63A Freedom of Information Commissioner and certain other persons not compellable to produce documents in legal proceedings

S. 63A
inserted by
No. 6/2012
s. 28.

- (1) The following persons cannot be compelled in a legal proceeding to produce any document or any part of a document that has come into the person's possession in the performance of the person's

s. 63B

functions under Parts VI and VIA or in acting for or on behalf of a person in the performance of those functions—

- (a) the Freedom of Information Commissioner;
 - (b) a member of staff of the office of the Freedom of Information Commissioner;
 - (c) a contractor, agent or other person acting for or on behalf of the Freedom of Information Commissioner.
- (2) This section does not apply to—
- (a) a criminal proceeding; or
 - (b) a proceeding under section 61K; or
 - (c) a proceeding involving a claim that the Freedom of Information Commissioner does not have the jurisdiction to compel the production of documents.

S. 63B
inserted by
No. 6/2012
s. 28.

63B Protection of person making complaint

No civil action lies against a person who makes a complaint to the Freedom of Information Commissioner under this Act for anything done in good faith by that person in making that complaint.

Pt 7 Div. 2
(Heading and
ss 63C, 63D)
inserted by
No. 6/2012
s. 29.

Division 2—Production of documents to Freedom of Information Commissioner

63C Production of exempt document

- (1) If, in the course of a review under Division 1 of Part VI or a complaint process under Part VIA, an agency or Minister claims that a document is an exempt document, the Freedom of Information Commissioner may ask for an explanation as to why it is exempt.

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- (2) Subject to subsection (3), if the Freedom of Information Commissioner is not satisfied that he or she can reasonably make a decision or recommendation on the basis of the explanation given under subsection (1), the Commissioner may ask to inspect and make copies of the document unless it is a document claimed to be exempt under section 28 or 29A.
- (3) If the document is claimed to be exempt under section 31—
- (a) the inspection of the document requested under subsection (2) may only take place at the premises of the agency which, or the Minister who, made the claim; and
 - (b) the Freedom of Information Commissioner is not entitled to possession of, or to make copies of, the document.

63D Use of documents

S. 63D
inserted by
No. 6/2012
s. 29.

- (1) The Freedom of Information Commissioner must do all things necessary to ensure that only a specified person has access to a document, or the contents of a document, produced to the Commissioner in a review under Division 1 of Part VI or in dealing with a complaint under Part VIA.
- (2) Any person who is or has been a specified person must not intentionally or recklessly disclose any information or document or the contents of any document received or considered in the course of a review under Division 1 of Part VI or a complaint under Part VIA to any person other than—
- (a) a specified person in the course of performing the person's functions under this or any other Act or acting for or on behalf of

a specified person in the performance of those functions; or

- (b) the person who provided the information or document or that person's representative; or
- (c) in accordance with section 61N.

Penalty: 240 penalty units or imprisonment for 2 years or both.

- (3) Subject to subsection (4), the Freedom of Information Commissioner may copy any document produced to the Commissioner in a review under Division 1 of Part VI or in dealing with a complaint under Part VIA other than a document claimed to be exempt under section 28, 29A or 31.
- (4) The Freedom of Information Commissioner may copy a document that is claimed to be an exempt document (other than a document claimed to be exempt under section 28, 29A or 31) only to the extent that this is necessary for the performance of the Commissioner's functions in conducting a review or dealing with a complaint.
- (5) The Freedom of Information Commissioner must, on completion of a review or a complaint process—
 - (a) return any document produced to the Commissioner in the review of a request or in dealing with the complaint to the person who produced the document; and
 - (b) return to that person, or destroy, any copies of the document.

- (6) In this section *specified person* means—
- (a) the Freedom of Information Commissioner;
or
 - (b) a member of staff of the office of the
Freedom of Information Commissioner; or
 - (c) a contractor, agent or other person acting for
or on behalf the Freedom of Information
Commissioner.

Division 3—Reporting

Pt 7 Div. 3
(Heading)
inserted by
No. 6/2012
s. 29.

64 Reporting by Freedom of Information Commissioner

S. 64
amended by
Nos 10155
s. 67(1)(s),
97/1993
s. 44(a),
38/1999
s. 6(d),
substituted by
No. 6/2012
s. 30.

- (1) As soon as practicable after the end of each
financial year, the Freedom of Information
Commissioner must prepare an annual report on
the operation of this Act during that year.
- (2) The report must contain information relating to
the following for the relevant year—
 - (a) the number of requests made to each agency
and to each Minister;
 - (b) the number of decisions that an applicant
was not entitled to access to a document on a
request, the provisions of this Act under
which these decisions were made and the
number of times each provision was
invoked;
 - (c) the name and designation of each officer of
an agency with authority to make a decision
in relation to a request, and the number of
decisions made by each officer that an
applicant was not entitled to access to a
document pursuant to a request;

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- (d) the number of applications for review of a decision by the Freedom of Information Commissioner under Division 1 of Part VI and the decisions on the applications;
 - (e) the number of applications to the Tribunal under section 50 and in respect of each application—
 - (i) the decision of the Tribunal; and
 - (ii) the details of any other order made by the Tribunal; and
 - (iii) if the decision in respect of which the application was made was a decision that an applicant is not entitled to access to a document in accordance with a request, the provision of this Act under which the first-mentioned decision was made;
 - (f) the number of complaints made to the Freedom of Information Commissioner under Part VIA;
 - (g) the number of notices served on the principal officer of an agency under section 12(1) and the number of decisions by the principal officer under that section that are adverse to a person's claim;
 - (h) details of any disciplinary action taken against any officer in respect of the administration of this Act;
 - (i) details of any recommendations made by the Freedom of Information Commissioner under Part VIA;
 - (j) the amount of any charges collected by each agency and Minister under this Act;

- (k) details of any reading room or other facility provided by the agency or Minister for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility;
 - (l) details of any difficulties met in the administration of this Act in relation to staffing and costs;
 - (m) any other facts that indicate an effort by the agency or Minister to administer and implement the spirit and intention of this Act.
- (3) The report may include a report on the performance and exercise of the Freedom of Information Commissioner's functions and powers under this Act.
- (4) The report must fairly, fully and accurately set out the response of an agency, Minister, person or body in relation to a recommendation referred to in subsection (2)(i).
- (5) The Freedom of Information Commissioner must transmit the annual report for a year to each House of the Parliament to be laid before that House on the same day that the annual report of the Freedom of Information Commissioner under the **Financial Management Act 1994** for that year is laid before that House.

64A Reports in relation to decisions by and matters before Supreme Court or Tribunal

S. 64A
inserted by
No. 6/2012
s. 30.

- (1) The Freedom of Information Commissioner must report to the Accountability and Oversight Committee of the Parliament—
- (a) on the number of times that relevant Ministers have made statements under section 65AB; and

s. 64B

- (b) if there have been 4 or more successful applications to the Supreme Court or the Tribunal by agencies against decisions of the Freedom of Information Commissioner in a 12 month period.
- (2) A report under subsection (1)(b) must—
- (a) set out a summary of the cases and the reasons for the determination of the Supreme Court or the Tribunal in each case; and
- (b) be made as soon as practicable after every 4 successful applications in the 12 month period.
- (3) A report is not required to set out a summary of a case if a summary of that case has been included in an earlier report under subsection (1)(b).

S. 64B
inserted by
No. 6/2012
s. 30.

64B Duty of agency or Minister to comply with requirements of Freedom of Information Commissioner

An agency or Minister must give the Freedom of Information Commissioner any information referred to in section 64(2) in relation to the agency or Minister.

S. 65
repealed by
No. 97/1993
s. 44(b).

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S. 65AA
inserted by
No. 58/1993
s. 24 (as
amended by
No. 97/1993
s. 47),
repealed by
No. 6/2012
s. 31.

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65AB Report to Parliament by Minister

S. 65AB
inserted by
No. 57/1999
s. 9.

- (1) This section applies if an agency or a Minister who was a party to a proceeding before the Tribunal under this Act seeks leave under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** to appeal on a question of law from an order of the Tribunal in the proceeding.
- (2) The Minister who is seeking leave to appeal or the responsible Minister in respect of the agency seeking leave to appeal must cause a brief statement of the reason or reasons for seeking leave to appeal—
 - (a) to be published in the Government Gazette within 10 days after the day on which the summons for leave to appeal is filed with the court; and
 - (b) to be laid before each House of Parliament on or before the 7th sitting day of that House after the day on which the summons for leave to appeal is filed with the court.
- (3) An agency that decides to seek leave to appeal must notify the responsible Minister of that decision as soon as practicable after it is made but not later than the day that the summons for leave to appeal is filed with the court.
- (4) The notice under subsection (3) must be in writing and must set out a brief statement of the reason or reasons for seeking leave to appeal.

Pt 7 Div. 4
(Heading)
inserted by
No. 6/2012
s. 32.

Division 4—Regulations

66 Regulations

(1) The Governor in Council may make regulations prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to—

S. 66(1)(a)
amended by
Nos 29/2006
s. 3(Sch. 1
item 12.2),
6/2012
s. 33(1).

(a) the making of charges of amounts, or the fixing of rates, for access to documents (including the provision of copies or transcripts) in accordance with this Act; and

S. 66(1)(b)
repealed by
No. 58/1993
s. 14, new
s. 66(1)(b)
inserted by
No. 6/2012
s. 33(2).

(b) the prescribing of professional standards for the purposes of this Act; and

S. 66(1)(c)
inserted by
No. 6/2012
s. 33(2).

(c) forms of access to documents, including access through an Internet site accessible to the public.

(2) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.

Division 5—Transitional and saving provisions

Pt 7 Div. 5
(Heading)
inserted by
No. 6/2012
s. 34.

67 Retrospective operation of law

- (1) An applicant for access to records about himself, within the meaning of section 33, shall be entitled to receive access subject to this Act to any such record notwithstanding that the record came into existence at any time prior to the date of commencement of this section.
- (2) An applicant for access to a document other than those referred to in subsection (1) shall be entitled to receive access, subject to this Act, to any such document provided that it came into existence not more than five years prior to the date of commencement of this section.
- (3) A Minister shall in his or her report under section 64 include advice regarding the practicability of extending the period of retrospective access provided under subsection (2) of this section.
- (4) Subsections (1) and (2) apply in relation to access to a document of an agency that is a council as if a reference to the date of commencement of this section were a reference to the date of commencement of section 25 of the **Freedom of Information (Amendment) Act 1993**.

S. 67(3)
substituted by
No. 97/1993
s. 44(c).

S. 67(4)
inserted by
No. 58/1993
s. 25.

68 Transitional

- (1) If—
 - (a) a request for access to a document was made to an agency or a Minister under Part III as in force before 1 January 2000; and

S. 68
inserted by
No. 57/1999
s. 10.

- (b) the time period provided in section 21 for notification of a decision on the request had not elapsed before 1 January 2000; and
- (c) notice of a decision on the request had not been received by the applicant before 1 January 2000—

the request must be dealt with by the agency or Minister in accordance with this Act as amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999**.

(2) If—

- (a) a request for access to a document was made to an agency or the Minister under Part III as in force before 1 January 2000; and
- (b) an application was made under section 51 for review of a decision on the request before 1 January 2000; and
- (c) a decision had not been made on that application before 1 January 2000—

the application under section 51 must be dealt with in accordance with this Act as amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999**.

(3) If—

- (a) a person was entitled before 1 January 2000 to make an application under section 51 for review of a decision on a request; and
- (b) the application is made on or after 1 January 2000—

the application must be dealt with in accordance with this Act as amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999**.

(4) If—

- (a) a person is entitled before 1 January 2000 to apply to the Tribunal for a review of a decision referred to in section 50(2); and
- (b) the application is made on or after 1 January 2000—

the Tribunal must determine the application in accordance with this Act as amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999**.

(5) If—

- (a) an application had been made to the Tribunal for a review of a decision referred to in section 50(2) before 1 January 2000; and
- (b) the application had not been finally determined by the Tribunal before 1 January 2000—

the Tribunal must determine the application in accordance with this Act as amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999**.

(6) If—

- (a) an application had been made to the Tribunal under section 27D as in force before 1 January 2000; and
- (b) the application under section 27D had not been finally determined before 1 January 2000—

the Tribunal must refer the application under section 27D back to the agency or Minister for consideration.

(7) An agency or Minister to whom an application is referred under subsection (6) must deal with that application in accordance with this Act as

amended by the **Freedom of Information (Miscellaneous Amendments) Act 1999** as if—

- (a) the application were a request under Part III; and
- (b) the request had been made on the day that the application was received from the Tribunal.

S. 68(7)(b)
amended by
No. 74/2000
s. 3(Sch. 1
item 53).

- (8) If a request was made by a person before 1 January 2000 for access to a document to which Part IIIA applied and access to the document from which personal information had been deleted was granted under section 27C(2), a fee is not payable for a further request by that person on or after 1 January 2000 under this Act for access to the personal information deleted from that document.
- (9) If a request was made by a person before 1 January 2000 for access to a document to which Part IIIA applied and access to the document was refused under section 27C, a fee is not payable for a further request by that person on or after 1 January 2000 under this Act for access to that document.

S. 69
inserted by
No. 6/2012
s. 35.

69 Transitional provisions—Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012

- (1) Despite the repeal of section 51A of this Act by section 17 of the **Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012**, this Act as in force before the commencement of section 17 continues to apply to—
 - (a) an application for internal review that was received but not determined by the agency before that commencement; and

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- (b) the making of an application for internal review after that commencement in relation to a decision made before that commencement where the period for making an application for that internal review had not expired before that commencement.
- (2) A person is not entitled to apply to the Freedom of Information Commissioner under this Act for review of a decision to which subsection (1) applies.
- (3) A person is not entitled to make a complaint to the Freedom of Information Commissioner under this Act if, before the commencement of section 24 of the 2012 Act, the person had made a complaint to the Ombudsman in relation to the matter.
- (4) A person may apply to the Freedom of Information Commissioner under Division 1 of Part VI for review of a decision of an agency made after the commencement of section 13 of the 2012 Act in relation to a request made before that commencement other than a decision made pursuant to subsection (1).
- (5) Without limiting any other requirement to give notice under this Act, the relevant agency must in the notice of decision inform a person to whom subsection (4) applies of the right to apply to the Freedom of Information Commissioner for review of that decision referred to in that subsection.
- (6) In this section **2012 Act** means **the Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012**.
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ENDNOTES

1. General Information

The **Freedom of Information Act 1982** was assented to on 5 January 1983 and came into operation as follows:

All of Act (*except* Part 2) on 5 July 1983: section 1(2); Part 2 on 5 July 1984: section 1(3).

2. Table of Amendments

This Version incorporates amendments made to the **Freedom of Information Act 1982** by Acts and subordinate instruments.

Public Service (Amendment) Act 1984, No. 10046/1984

Assent Date: 1.5.84
Commencement Date: S. 32 on 20.6.84: Government Gazette 13.6.84 p. 1886
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Adoption Act 1984, No. 10150/1984

Assent Date: 13.11.84
Commencement Date: S. 3(1)(Sch.) on 16.11.87: Government Gazette 28.10.87 p. 2880
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Administrative Appeals Tribunal Act 1984, No. 10155/1984

Assent Date: 20.11.84
Commencement Date: S. 67 on 1.3.85: Government Gazette 30.1.85 p. 191
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Infertility (Medical Procedures) Act 1984, No. 10163/1984 (as amended by No. 86/1987)

Assent Date: 20.11.84
Commencement Date: S. 34 on 1.7.88: Government Gazette 4.5.88 p. 1123
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Health (Amendment) Act 1985, No. 10262/1985

Assent Date: 10.12.85
Commencement Date: S. 4(Sch.) on 1.3.86: Government Gazette 26.2.86 p. 451
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 items 46.1, 46.2) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

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Freedom of Information (Amendment) Act 1990, No. 84/1990

Assent Date: 11.12.90
Commencement Date: 11.12.90: s. 2
Current State: All of Act in operation

Freedom of Information (Amendment) Act 1993, No. 58/1993 (as amended by No. 7/1993)

Assent Date: 8.6.93
Commencement Date: Ss 1–6, 8–15 on 8.6.93: s. 2(1); s. 7 on 1.7.93: s. 2(2); ss 16–25 on 1.1.94: s. 2(3)
Current State: All of Act in operation

Public Sector Management (Amendment) Act 1993, No. 97/1993

Assent Date: 16.11.93
Commencement Date: S. 44 on 16.11.93: s. 2(4)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 items 22.1, 22.2) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 34) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 2/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 32) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 5) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Freedom of Information Act 1982
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Freedom of Information (Amendment) Act 1999, No. 38/1999

Assent Date: 8.6.99
Commencement Date: 1.7.99: s. 2
Current State: All of Act in operation

Freedom of Information (Miscellaneous Amendments) Act 1999, No. 57/1999

Assent Date: 21.12.99
Commencement Date: Ss 4–10 on 1.1.2000: s. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 53) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: Ss 101, 102 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 50) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Terrorism (Community Protection) Act 2003, No. 7/2003

Assent Date: 15.4.03
Commencement Date: Ss 42–44 on 16.4.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 9) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 84) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

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Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 45) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 22) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 12) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Terrorism (Community Protection) (Further Amendment) Act 2006, No. 30/2006

Assent Date: 6.6.06
Commencement Date: Ss 19–23 on 7.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Assisted Reproductive Treatment Act 2008, No. 76/2008

Assent Date: 11.12.08
Commencement Date: S. 155 on 1.1.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 26) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 25) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012, No. 6/2012

Assent Date: 6.3.12
Commencement Date: Ss 4, 6, 8, 33 on 7.11.12: Special Gazette (No. 373) 7.11.12 p. 1; ss 5, 7, 9–32, 34, 35 on 1.12.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

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Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12

Commencement Date: S. 3(Sch. item 20) on 28.6.12: s. 2(1)

Current State: This information relates only to the provision/s
amending the **Freedom of Information Act 1982**

Endnotes

3. Explanatory Details

No entries at date of publication.