

Authorised Version No. 103
Freedom of Information Act 1982
No. 9859 of 1982

Authorised Version incorporating amendments as at
6 March 2019

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Section

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Freedom of Information Act 1982
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6 March 2019

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repealed by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;

* * * * *

S. 5(1) def. of *Assistant Commissioner* inserted by No. 59/2014 s. 3, repealed by No. 20/2017 s. 4(d).

authorised Hub entity has the meaning given in the **Family Violence Protection Act 2008**;

S. 5(1) def. of *authorised Hub entity* inserted by No. 11/2018 s. 44.

Board of Inquiry has the same meaning as in the **Inquiries Act 2014**;

S. 5(1) def. of *Board of Inquiry* inserted by No. 67/2014 s. 147(Sch. 2 item 18.1(a)).

business day means a day other than a Saturday, a Sunday or a public holiday or half-holiday appointed under the **Public Holidays Act 1993**;

S. 5(1) def. of *business day* inserted by No. 59/2014 s. 3.

child means a person under the age of 18 years;

S. 5(1) def. of *child* inserted by No. 20/2017 s. 4(a).

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

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
council
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
Court Services Victoria
inserted by
No. 1/2014
s. 66(b).

Court Services Victoria means Court Services Victoria established under section 5 of the **Court Services Victoria Act 2014**;

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
Nos 108/2004
s. 117(1)
(Sch. 3
item 84(a)),
37/2014
s. 10(Sch.
item 69.1).

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

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

document includes, in addition to a document in writing—

- (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;

family violence has the meaning given in the **Family Violence Protection Act 2008**;

S. 5(1) def. of *family violence* inserted by No. 23/2017 s. 23.

Formal Review has the same meaning as in the **Inquiries Act 2014**;

S. 5(1) def. of *Formal Review* inserted by No. 67/2014 s. 147(Sch. 2 item 18.1(a)).

* * * * *

S. 5(1) def. of *Freedom of Information Commissioner* inserted by No. 6/2012 s. 4, repealed by No. 20/2017 s. 4(d).

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 Complaints Commissioner means the Commissioner within the meaning of the **Health Complaints Act 2016**;

S. 5(1) def. of *Health Complaints Commissioner* inserted by No. 22/2016 s. 171(b).

* * * * *

S. 5(1) def. of *Health Services Commissioner* inserted by No. 2/2001 s. 101(1)(a), repealed by No. 22/2016 s. 171(a).

IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 5(1) def. of *IBAC* inserted by No. 20/2017 s. 4(a).

Information Commissioner means the Information Commissioner appointed under section 6C;

S. 5(1) def. of *Information Commissioner* inserted by No. 20/2017 s. 4(a).

* * * * *

S. 5(1) def. of *information sharing entity* inserted by No. 23/2017 s. 23, repealed by No. 11/2018 s. 33.

investigation means an investigation under Part VIB;

S. 5(1) def. of *investigation* inserted by No. 20/2017 s. 4(a).

S. 5(1) def. of
*legal
practitioner*
inserted by
No. 20/2017
s. 4(a).

legal practitioner means an Australian legal practitioner;

S. 5(1) def. of
*member of
staff*
inserted by
No. 20/2017
s. 4(a).

member of staff, of the Office of the Victorian Information Commissioner, means a person employed or engaged under section 6Q;

S. 5(1) def. of
*Ministerial
professional
standards*
inserted by
No. 20/2017
s. 4(a).

Ministerial professional standards means professional standards adopted under section 6Y(1);

S. 5(1) def. of
*notice to
produce or
attend*
inserted by
No. 20/2017
s. 4(a).

notice to produce or attend means a notice to produce or attend issued under section 49KB, 61I(4) or 61P(2), and includes a notice as varied under section 61V;

S. 5(1) def. of
*Office of the
Victorian
Information
Commis-
sioner*
inserted by
No. 20/2017
s. 4(a).

Office of the Victorian Information Commissioner means the Office of the Victorian Information Commissioner established under section 6B;

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;
 - (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, Board of Inquiry or Formal Review;

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), 67/2014 s. 147(Sch. 2 item 18.1(b)).

* * * * *

- (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)), 1/2014 s. 66(a).

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
- (ia) in the case of Court Services Victoria—the person holding the office or performing the duties of the Chief Executive Officer of Court Services Victoria; 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;

professional standards means standards published under section 6V(1), but does not include Ministerial professional standards;

S. 5(1) def. of *professional standards* inserted by No. 20/2017 s. 4(a).

Public Access Deputy Commissioner means the Public Access Deputy Commissioner appointed under section 6D;

S. 5(1) def. of *Public Access Deputy Commissioner* inserted by No. 20/2017 s. 4(a).

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;

S. 5(1) def. of *Royal Commission* inserted by No. 67/2014 s. 147(Sch. 2 item 18.1(a)).

Royal Commission means—

- (a) a Royal Commission established under the **Inquiries Act 2014**; or
- (b) a Royal Commission established under the prerogative of the Crown;

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), amended by No. 20/2017 s. 4(b).

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

Victorian Inspectorate means the Victorian Inspectorate established under section 8 of the **Victorian Inspectorate Act 2011**.

S. 5(1) def. of *Victorian Inspectorate* inserted by No. 20/2017 s. 4(c).

- (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, Victoria Police shall be deemed to be a prescribed authority.

S. 5(4) amended by No. 37/2014 s. 10(Sch. item 69.2).

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,
amended by
No. 59/2014
s. 4,
substituted by
No. 20/2017
s. 5.

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

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

- (a) the Information Commissioner or the Public Access Deputy Commissioner; or
(b) a member of staff of the Office of the Victorian Information Commissioner; or
(c) a contractor, agent or other person acting for or on behalf of the Information Commissioner or the Public Access Deputy 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 Information Commissioner under Part VIA; or
(f) an investigation.

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

6A Relationship with other laws

- (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 **Privacy and Data**

S. 6A(1)
amended by
No. 60/2014
s. 140(Sch. 3
item 20.1).

Protection Act 2014 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 14 of the **Privacy and Data Protection Act 2014** and sections 7 and 16 of the **Health Records Act 2001**.

Note to s. 6A amended by No. 60/2014 s. 140(Sch. 3 item 20.2).

Pt 1A
(Heading and
ss 6B–6K)
inserted by
No. 6/2012
s. 6,
amended by
No. 59/2014
ss 5-9,
substituted as
Pt 1A
(Heading and
ss 6B–6T) by
No. 20/2017
s. 6.

Part IA—Office of the Victorian Information Commissioner

S. 6B
substituted by
No. 20/2017
s. 6.

6B Establishment of the Office of the Victorian Information Commissioner

- (1) There is to be an Office of the Victorian Information Commissioner.
- (2) The Office of the Victorian Information Commissioner consists of—
 - (a) the Information Commissioner; and
 - (b) the Public Access Deputy Commissioner; and
 - (c) the Privacy and Data Protection Deputy Commissioner appointed under section 8H of the **Privacy and Data Protection Act 2014**; and
 - (d) the staff employed and other persons engaged under section 6Q.
- (3) Except where expressly provided in this Act or the **Privacy and Data Protection Act 2014**—
 - (a) the Information Commissioner is not subject to the direction or control of the Minister in respect of the performance of the Information Commissioner's duties and functions and the exercise of the Information Commissioner's powers; and

(b) the Public Access Deputy Commissioner is not subject to the direction or control of the Minister in respect of the performance of the Deputy Commissioner's duties and functions and the exercise of the Deputy Commissioner's powers.

6C Appointment of the Information Commissioner

S. 6C
substituted by
No. 20/2017
s. 6.

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person as the Information Commissioner.
- (2) The following persons are not eligible to be appointed as the Information Commissioner—
 - (a) a person who is a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory;
 - (b) a person who is a member of a council.
- (3) A person may hold office as Information Commissioner for not more than 2 terms (whether consecutive terms or otherwise).

6D Appointment of Public Access Deputy Commissioner

S. 6D
substituted by
No. 20/2017
s. 6.

- (1) The Governor in Council may appoint an eligible person as the Public Access Deputy Commissioner.
- (2) A person is not eligible for appointment as the Public Access Deputy Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (b) a member of a council.
- (3) A person may hold office as Public Access Deputy Commissioner for not more than 2 terms (whether consecutive terms or otherwise).

S. 6E
substituted by
No. 20/2017
s. 6.

6E Terms and conditions of appointment of Information Commissioner

- (1) The appointment of the Information Commissioner is to be for the period, not exceeding 5 years, set out in the instrument of appointment.
- (2) Subject to this Part, the Information Commissioner holds office on the terms and conditions determined by the Governor in Council.
- (3) Subject to section 6C(3), the Information Commissioner may be reappointed.
- (4) The Information Commissioner is entitled to leave of absence as determined by the Governor in Council.
- (5) The Information Commissioner must not directly or indirectly engage in paid employment outside the duties of the office of Information Commissioner.
- (6) The **Public Administration Act 2004** does not apply to the Information Commissioner in respect of the Office of the Victorian Information Commissioner except as provided for in section 16 of that Act.

S. 6F
substituted by
No. 20/2017
s. 6.

6F Terms and conditions of appointment of Public Access Deputy Commissioner

- (1) The appointment of the Public Access Deputy Commissioner is to be for the period, not exceeding 5 years, set out in the instrument of appointment.
- (2) Subject to this Part, the Public Access Deputy Commissioner holds office on the terms and conditions determined by the Governor in Council.

- (3) Subject to section 6D(3), the Public Access Deputy Commissioner may be reappointed.
- (4) The Public Access Deputy Commissioner is entitled to leave of absence as determined by the Governor in Council.
- (5) The Public Access Deputy Commissioner must not directly or indirectly engage in paid employment outside the duties of the office of Public Access Deputy Commissioner.

6G Functions of the Information Commissioner

S. 6G
substituted by
No. 20/2017
s. 6.

- (1) The Information Commissioner has the following functions—
 - (a) the functions set out in section 6I;
 - (b) any other functions conferred on the Information Commissioner by or under this Act;
 - (c) the functions conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014** or any other Act.
- (2) The Information Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible.

6H Functions of the Public Access Deputy Commissioner

S. 6H
substituted by
No. 20/2017
s. 6.

- (1) The Public Access Deputy Commissioner has the functions set out in section 6I(2) and any function conferred on the Information Commissioner under this Act other than—
 - (a) a function conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014** or any other Act;or

- (b) a function of the Information Commissioner referred to in section 6I(1); or
 - (c) a function of the Information Commissioner referred to in section 6R; or
 - (d) issuing directions under section 6S; or
 - (e) a function of the Information Commissioner referred to in section 63G.
- (2) The Public Access Deputy Commissioner must perform functions and exercise powers under this or any other Act with as little formality and technicality as possible.

S. 6I
substituted by
No. 20/2017
s. 6.

6I Freedom of information functions

- (1) The Information Commissioner has the following functions—
- (a) to employ staff and engage contractors under section 6Q;
 - (b) to develop and review professional standards in accordance with Part IB;
 - (c) to make reports in accordance with Division 3 of Part VII;
 - (d) to provide advice, at the request of the Minister, about the operation and administration of this Act;
 - (e) to conduct investigations under Part VIB.
- (2) The Information Commissioner and the Public Access Deputy Commissioner each have the following functions—
- (a) to promote understanding and acceptance by agencies and the public of this Act and the object of this Act;
 - (b) to provide advice, education and guidance to agencies and the public in relation to compliance with the professional standards;

- (c) to monitor compliance with professional standards;
- (d) in accordance with Division 1 of Part VI, to conduct reviews of decisions by agencies and Ministers on requests;
- (e) in accordance with Part VIA, to receive and handle complaints;
- (f) to provide advice, education and guidance to agencies and the public in relation to the Information Commissioner's functions.

6J Performance of concurrent functions

If a function may be performed by the Information Commissioner and the Public Access Deputy Commissioner, that function may be performed by—

- (a) the Information Commissioner; or
- (b) the Public Access Deputy Commissioner; or
- (c) the Information Commissioner and the Public Access Deputy Commissioner.

S. 6J
substituted by
No. 20/2017
s. 6.

6K General powers of Information Commissioner and Public Access Deputy Commissioner

- (1) The Information Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Information Commissioner's functions.
- (2) The Public Access Deputy Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Deputy Commissioner's functions.

S. 6K
substituted by
No. 20/2017
s. 6.

New s. 6L
inserted by
No. 20/2017
s. 6.

6L Remuneration

- (1) The Information Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.
- (2) The Public Access Deputy Commissioner is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.

New s. 6M
inserted by
No. 20/2017
s. 6.

6M Vacancy and resignation of Information Commissioner or Public Access Deputy Commissioner

- (1) The Information Commissioner ceases to hold office if the Information Commissioner—
 - (a) resigns by notice in writing delivered to the Minister; 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 6N.
- (2) The Public Access Deputy Commissioner ceases to hold office if the Deputy Commissioner—
 - (a) resigns by notice in writing delivered to the Minister; 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 6O.
- (3) A resignation under subsection (1)(a) or (2)(a) takes effect on—
- (a) the day on which it is received by the Minister; or
 - (b) if a later day is specified in the notice, on that day.

6N Suspension of Information Commissioner and removal from office

S. 6N
inserted by
No. 20/2017
s. 6.

- (1) The Governor in Council, on the advice of the Minister, may suspend the 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 Information Commissioner must be removed from office by the Governor in Council if each House of Parliament, within 20 sitting days after the day on which 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 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 Information Commissioner is suspended from office under subsection (1), the Information Commissioner is taken not to be the Information Commissioner during the period of suspension.

S. 6O
inserted by
No. 20/2017
s. 6.

6O Suspension of Public Access Deputy Commissioner and removal from office

- (1) The Governor in Council, on the recommendation of the Minister, may suspend or remove the Public Access Deputy Commissioner from office on any of the following grounds—
 - (a) misconduct;
 - (b) neglect of duty;
 - (c) inability to perform the duties of the office;
 - (d) any other ground on which the Governor in Council is satisfied that the Public Access Deputy Commissioner should not hold office.
- (2) If the Public Access Deputy Commissioner is removed from office, the Minister must cause a full statement of the grounds for removal to be presented to each House of Parliament within 10 sitting days of that House after the removal.

S. 6P
inserted by
No. 20/2017
s. 6.

6P Acting Information Commissioner and Public Access Deputy Commissioner

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person to act as the Information Commissioner—
 - (a) during a vacancy in the office of the Information Commissioner; or

- (b) during any period, or all periods, when the Information Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office.
- (2) The Governor in Council, on the recommendation of the Minister, may appoint an eligible person to act as the Public Access Deputy Commissioner—
 - (a) during a vacancy in the office of the Public Access Deputy Commissioner; or
 - (b) during any period, or all periods, when the Public Access Deputy Commissioner is absent from duty or from the State or, for another reason, cannot perform the functions of the office.
- (3) A person is not eligible for appointment to act as the Information Commissioner or the Public Access Deputy Commissioner if the person is—
 - (a) a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
 - (b) a member of a council.
- (4) An appointment under subsection (1) or (2) is for the period, not exceeding 12 months, set out in the instrument of appointment.
- (5) The Governor in Council, on the recommendation of the Minister, may at any time remove the acting Information Commissioner or the acting Public Access Deputy Commissioner from office.
- (6) While a person is acting in the office of the Information Commissioner or the Public Access Deputy Commissioner, the person—
 - (a) has, and may exercise, all the powers and must perform all the duties of that office under this Act and any other Act; and

- (b) is entitled to be paid the remuneration and allowances that the Information Commissioner or Public Access Deputy Commissioner would have been entitled to for performing those duties.

S. 6Q
inserted by
No. 20/2017
s. 6.

6Q Staff

The Information Commissioner may—

- (a) employ under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the purposes of the Information Commissioner's functions under this Act or the **Privacy and Data Protection Act 2014**; and
- (b) engage any contractor, agent or other person to assist the Information Commissioner in the performance of the Information Commissioner's functions under this Act or the **Privacy and Data Protection Act 2014**.

S. 6R
inserted by
No. 20/2017
s. 6.

6R Delegation

- (1) The Information Commissioner may by instrument delegate to the Public Access Deputy Commissioner or any member of staff any of the Information Commissioner's functions and powers under this Act except—
 - (a) the power to employ staff and engage contractors or other persons under section 6Q; or
 - (b) the power to make a fresh decision under section 49P on a review under Part VI; or
 - (c) the power to make recommendations under section 61L in relation to a complaint under Part VIA; or

- (d) the power to prepare a report under Part VII;
or
 - (e) this power of delegation.
- (2) The Information Commissioner may by instrument delegate only to the Public Access Deputy Commissioner the power to undertake an investigation.
- (3) The Information Commissioner may by instrument delegate to the Public Access Deputy Commissioner or any member of staff a function or power conferred on the Information Commissioner by or under any other Act except—
- (a) a function or power conferred on the Information Commissioner by or under the **Privacy and Data Protection Act 2014**; or
 - (b) a function or power relating to information privacy, protective data security or law enforcement data security conferred on the Information Commissioner by or under any other Act.
- (4) With the written consent of the Information Commissioner, the Public Access Deputy Commissioner may by instrument delegate to any member of staff any of the Deputy Commissioner's functions and powers (including any power delegated to the Deputy Commissioner under subsection (1)) except—
- (a) the power to make a fresh decision under section 49P on a review under Part VI; or
 - (b) the power to make recommendations under section 61L in relation to a complaint under Part VIA; or
 - (c) this power of delegation.

S. 6S
inserted by
No. 20/2017
s. 6.

6S Directions

The Information Commissioner may issue directions to the Public Access Deputy Commissioner or to any member of staff in relation to the performance of functions under this Act other than in relation to the following—

- (a) the review of a decision under section 49P;
- (b) the consideration of a complaint under section 61L.

S. 6T
inserted by
No. 20/2017
s. 6.

6T Validity of acts and decisions

An act or decision of the Information Commissioner, Public Access Deputy Commissioner or acting Information Commissioner or acting Public Access Deputy Commissioner is not invalid only because—

- (a) of a defect or irregularity in or in connection with the appointment of the Information Commissioner, Public Access Deputy Commissioner or acting Information Commissioner or acting Public Access Deputy Commissioner; or
- (b) in the case of an acting Information Commissioner or acting Public Access Deputy Commissioner, that the occasion for so acting had not arisen or had ceased.

Part IB—Professional standards

Pt 1B
(Heading and
ss 6L, 6M)
inserted by
No. 6/2012
s. 6,
substituted as
Pt 1B
(Heading and
ss 6U–6Z) by
No. 20/2017
s. 7.

6U Development of professional standards

S. 6U
inserted by
No. 20/2017
s. 7.

- (1) The Information Commissioner 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, including extending time for making decisions on requests.
- (3) The professional standards must not be inconsistent with this Act.
- (4) Before publishing professional standards under section 6V the Information Commissioner must—
 - (a) publish the draft professional standards on the Internet site of the Office of the Victorian Information Commissioner; and

- (b) notify, in writing, principal officers of agencies and any other relevant person that—
 - (i) the draft professional standards have been published; and
 - (ii) submissions may be made to the Information Commissioner on or before the date specified in the notice.
- (5) The date specified in a notice under subsection (4)(b) must be at least 28 days after the day on which the draft professional standards are published.
- (6) The Information Commissioner must take into account all reasonable submissions made under this section relating to the draft professional standards before publishing them under section 6V.

S. 6V
inserted by
No. 20/2017
s. 7.

6V Publication of professional standards

- (1) As soon as practicable after finalising draft professional standards in accordance with section 6U, the Information Commissioner must cause the professional standards to be published—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Office of the Victorian Information Commissioner.
- (2) Professional standards have effect on and after the later of the following—
 - (a) the date specified in the professional standards; or
 - (b) the date that is 20 business days after the day on which the professional standards are published in the Government Gazette.

- (3) The Information Commissioner must cause a copy of the professional standards published under subsection (1) to be laid before each House of Parliament not more than 6 sitting days after the day on which the standards are published in the Government Gazette.

6W Compliance with professional standards

S. 6W
inserted by
No. 20/2017
s. 7.

- (1) Subject to subsection (3), the principal officer of an agency and any officer or employee of the agency concerned in the operation of this Act must comply with professional standards in performing the officer's or employee's functions under this Act.
- (2) Subject to subsection (3), 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 in performing the officer's or employee's functions under this Act.
- (3) Professional standards do not apply to a principal officer, officer or employee of an agency in making decisions in respect of requests made to a Minister, except as provided under section 6Y.
- (4) A principal officer must ensure that all officers and employees of the agency are informed about the requirements of the professional standards.

6X Review and amendment of professional standards

S. 6X
inserted by
No. 20/2017
s. 7.

- (1) The Information Commissioner must review professional standards at least once in every 4-year period.
- (2) The Information Commissioner may at any time amend professional standards.
- (3) The requirements of sections 6U and 6V apply to any amendment of professional standards, other than typographical or similar amendments.

S. 6Y
inserted by
No. 20/2017
s. 7.

6Y Ministerial professional standards

- (1) The Premier, by notice published in the Government Gazette, may adopt professional standards (either wholly or with modifications) to be applied to Ministers.
- (2) If the Premier adopts professional standards under subsection (1)—
 - (a) the professional standards as adopted have effect on and after the date stated in the notice; and
 - (b) the Premier must cause the professional standards as adopted to be published on the Internet site of the Department of Premier and Cabinet at least 20 business days before the date stated in the notice.
- (3) The Premier must review Ministerial professional standards whenever the Information Commissioner reviews or amends professional standards under section 6X.
- (4) The Premier may at any time amend Ministerial professional standards.
- (5) The requirements of subsections (1) and (2) apply to any amendment of Ministerial professional standards, other than typographical or similar amendments.

S. 6Z
inserted by
No. 20/2017
s. 7.

6Z Compliance with Ministerial professional standards

- (1) A Minister must comply with Ministerial professional standards in performing the Minister's functions under this Act.
- (2) A person (including an officer of an agency) authorised to make decisions in respect of requests made to a Minister must comply with Ministerial professional standards in relation to that request.

Part II—Publication of certain documents and information

7 Publication of information concerning functions etc. of agencies

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

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

(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—

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

- (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.

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

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

- (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.

Freedom of Information Act 1982

No. 9859 of 1982

Part II—Publication of certain documents and information

- (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. **S. 7(2) amended by No. 58/1993 s. 5(3).**
- (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.
- (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— **S. 7(4) substituted by No. 58/1993 s. 5(4), amended by No. 58/1993 s. 17(3).**
- (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.
- (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(4A) inserted by No. 58/1993 s. 5(4).**
- (4AA) The information to be published in accordance with this section by an agency that is a council must be published— **S. 7(4AA) inserted by No. 58/1993 s. 17(4).**
- (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—

- (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

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

- (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;

- (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;

- (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

- (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

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

Freedom of Information Act 1982

No. 9859 of 1982

Part II—Publication of certain documents and information

(b) cause the person to be given notice in writing of his decision.

(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.

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.

S. 15(2)
amended by
No. 38/1999
s. 6(a),
repealed by
No. 67/2014
s. 147(Sch. 2
item 18.2).

* * * * *

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

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

- (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.

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

- (2A) A request must be accompanied by a fee of 2 fee units.

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

- (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.

- (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.

- (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

- (1) An agency or Minister must take all reasonable steps to enable an applicant to be notified of a decision on a request as soon as practicable but not later than—
- (a) 30 days after the day on which the request is received by or on behalf of the agency or Minister; or
 - (b) if that period is extended or further extended, the day after that period as extended ends.
- (2) An agency or Minister may extend the period for deciding a request referred to in subsection (1)(a)—
- (a) if consultation is required under section 29, 29A, 31, 31A, 33, 34 or 35, by a period of not more than 15 days; or
 - (b) in any case, by a period of not more than 30 days, as agreed by the applicant.

S. 21
substituted by
No. 20/2017
s. 8.

- (3) An agency or Minister may further extend a period for deciding a request in accordance with subsection (2)(b) any number of times.
- (4) An agency or Minister must notify the applicant in writing if the period for deciding a request is extended or further extended under this section.
- (5) The period for deciding a formal request cannot be extended or further extended under this section if that period has expired.

22 Charges for access to documents

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

- (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;
 - (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—
- (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
- (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)(h)
substituted by
No. 58/1993
s. 7(2).**

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

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S. 22(1)(j)
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.

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

- (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
 - (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;

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

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

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

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

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

(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 **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 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).

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

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;

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

(aa) for presentation to a council;

(b) for release to the Press; or

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

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

24A Repeated requests

(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.

25 Deletion of exempt matter or irrelevant material

Where—

- (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;
- (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

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

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

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

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.
- (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.
- (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(1), 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 period referred to in section 21(1).

S. 25A(7)
amended by
Nos 38/1999
s. 6(b),
20/2017 s. 9.

* * * * *

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.

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

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

S. 26(2)
amended by
No. 10155
s. 67(1)(b).

27 Reasons etc. to be given

(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

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

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;

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

(b) where the decision relates to an agency, state the name and designation of the person giving the decision;

(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;

S. 27(1)(da)
inserted by
No. 2/2001
s. 101(1)(d)(ii).

(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; | S. 27(1)(da)(ii) amended by No. 6/2012 s. 10(1)(a). |
| (iii) an application for conciliation may be made under Division 2 of Part VI of this Act; | S. 27(1)(da)(iii) amended by No. 6/2012 s. 10(1)(b). |
| (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— | S. 27(1)(db) inserted by No. 2/2001 s. 101(d)(ii). |
| (i) an application for a review of the decision may be made under Division 1 of Part VI of this Act; | S. 27(1)(db)(i) amended by No. 6/2012 s. 10(2)(a). |
| (ii) if applicable, an application for conciliation may be made under Division 2 of Part VI of this Act; | S. 27(1)(db)(ii) amended by No. 6/2012 s. 10(2)(b). |
| (e) where, in the case of a decision of an agency or a Minister, 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, 31 or 31A but the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Information Commissioner. | 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), 20/2017 s. 10(1). |
| (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; | |

Freedom of Information Act 1982
No. 9859 of 1982
Part III—Access to documents

S. 27(2)(ab)
inserted by
No. 23/2017
s. 24.

(ab) is not required to confirm or deny the existence of any document, if confirming or denying the existence of that document would involve the unreasonable disclosure of information relating to the personal affairs of any person for the reason that it would increase the risk to a primary person's safety from family violence;

S. 27(2)(ac)
inserted by
No. 11/2018
s. 34.

(ac) is not required to confirm or deny the existence of any document, if confirming or denying the existence of that document would involve the unreasonable disclosure of information relating to the personal affairs of any person for the reason that it would increase the risk to the safety of a child or group of children;

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),
20/2017
s. 10(2).

(b) if the decision relates to a request for access to a document that is an exempt document under section 28, 29A, 31 or 31A or that, if it existed, would be an exempt document under section 28, 29A, 31 or 31A, may state the decision in terms which neither confirm nor deny the existence of any document.

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

* * * * *

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

(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.

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

(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),
repealed by
No. 20/2017
s. 11.

* * * * *

S. 28(5)
substituted by
No. 58/1993
s. 12(2),
amended by
No. 6/2012
s. 11(1),
repealed by
No. 20/2017
s. 11.

* * * * *

S. 28(6)
inserted by
No. 58/1993
s. 12(2),
repealed by
No. 20/2017
s. 11.

* * * * *

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

S. 29
amended by
No. 20/2017
s. 12 (ILA
s. 39B(1)).

- (1) 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.
- (2) In deciding whether a document is an exempt document under subsection (1), an agency or Minister, if practicable, must—
- (a) notify any of the following that are relevant that the agency or Minister has received a request for access to the document—
 - (i) another agency or Minister;
 - (ii) an agency of another country or the Commonwealth or another State or a Territory;
 - (iii) an authority of another country or the Commonwealth or another State or a Territory; and

S. 29(2)
inserted by
No. 20/2017
s. 12.

- (b) seek the view of that agency, authority or Minister as to whether the document should be disclosed.

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

29A Documents affecting national security, defence or international relations

- (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.

S. 29A(1A)
inserted by
No. 30/2006
s. 22(2),
amended by
No. 37/2014
s. 10(Sch.
item 69.3),
substituted by
No. 76/2014
s. 6.

- (1A) Without limiting subsection (1), a document is an exempt document if it is a document held or created by Victoria Police for the purpose of—
- (a) counterterrorism or a purpose relating to counterterrorism; or
 - (b) the protection of critical infrastructure within the meaning of section 74B of the **Emergency Management Act 2013** on—
 - (i) the Victorian Critical Infrastructure Register under section 74J of the **Emergency Management Act 2013**; or
 - (ii) any corresponding register kept by an agency of the Commonwealth.

S. 29A(1B)
inserted by
No. 30/2006
s. 22(2),
substituted by
No. 76/2014
s. 6.

- (1B) Without limiting subsection (1), a document is an exempt document if it is a document—
- (a) created for or with respect to emergency risk management arrangements for critical infrastructure resilience under Part 7A of the **Emergency Management Act 2013** for the purposes of administering, complying with, or enforcing that Part; or

(b) which contains information about, or which could lead to the identification of, a document to which paragraph (a) applies.

(1C) Without limiting subsection (1), a document is an exempt document if subsection (1B) as in force before the commencement of section 6 of the **Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014** would apply to or in respect of the document had section 6 of the **Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014** not come into operation.

S. 29A(1C)
inserted by
No. 76/2014
s. 6.

(1D) In deciding whether a document is an exempt document under this section, an agency or Minister, if practicable, must—

S. 29A(1D)
inserted by
No. 20/2017
s. 13(1).

(a) notify any of the following that are relevant that the agency or Minister has received a request for access to the document—

- (i) another agency or Minister;
- (ii) an agency of another country or the Commonwealth or another State or a Territory;
- (iii) an authority of another country or the Commonwealth or another State or a Territory; and

(b) seek the view of that agency, authority or Minister as to whether the document should be disclosed.

(2) For the purposes of this Act—

(a) a certificate signed by a Department Head or the Chief Commissioner of Police certifying that a document as described in a request is or, if it existed, would be one of a kind referred to in subsection (1), (1A) or (1B)

S. 29A(2)
amended by
No. 30/2006
s. 22(3),
substituted by
No. 20/2017
s. 13(2).

establishes that the document is or, if it existed, would be an exempt document;

- (b) a certificate signed by a Department Head or the Chief Commissioner of Police certifying that a document as described in a notice to produce or attend is or, if it existed, would be one of a kind referred to in subsection (1), (1A) or (1B) establishes that the document is or, if it existed, would be an exempt document;
- (c) a certificate signed by a Department Head or the Chief Commissioner of Police certifying that information described in a notice to produce or attend would, if included in a document, make that document one of a kind referred to in subsection (1), (1A) or (1B), establishes that the information described is information that if included in a document would make that document an exempt document.

S. 29A(3)
amended by
Nos 30/2006
s. 22(4),
6/2012
s. 11(2),
substituted by
No. 20/2017
s. 13(3).

- (3) The Information Commissioner must not conduct a review, handle a complaint or conduct an investigation in respect of—
 - (a) a certificate under subsection (2); or
 - (b) a question whether a document is, or whether a document including the information would be, of a kind referred to in subsection (1), (1A) or (1B); or
 - (c) a decision to sign a certificate under subsection (2).
- (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**.

29B Documents of Court Services Victoria

A document is an exempt document if it is a document of Court Services Victoria that relates to the exercise of a judicial or quasi-judicial function of a court or VCAT.

S. 29B
inserted by
No. 1/2014
s. 67.

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).
- (3) This section does not apply to a document by reason only of purely factual material contained in the document.

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

- (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;
 - (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
Nos 30/2006
s. 22(5),
37/2014
s. 10(Sch.
item 69.3),
76/2014 s. 7.

(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 Command of Victoria Police.

S. 31(4)
inserted by
No. 82/2014
s. 29.

(4) Despite anything to the contrary in this section, a document is an exempt document if it is a document contained in the Register established and maintained under section 62 of the **Sex Offenders Registration Act 2004**.

S. 31(5)
inserted by
No. 20/2017
s. 14.

(5) In deciding whether a document is an exempt document under subsection (1), an agency or Minister, if practicable, must—

- (a) notify any of the following that are relevant that the agency or Minister has received a request for access to the document—
 - (i) another agency or Minister;
 - (ii) an agency of the Commonwealth or another State or a Territory;
 - (iii) an authority of the Commonwealth or another State or a Territory; and
- (b) seek the view of that agency, authority or Minister as to whether the document should be disclosed.

S. 31(6)
inserted by
No. 20/2017
s. 14.

(6) In deciding whether it is in the public interest to grant access to a document referred to in subsection (2), an agency or Minister, if practicable, must—

- (a) notify any of the following that are relevant that the agency or Minister has received a request for access to the document—
 - (i) another agency or Minister;

- (ii) an agency of the Commonwealth or another State or a Territory;
 - (iii) an authority of the Commonwealth or another State or a Territory; and
- (b) seek the view of that agency, authority or Minister as to whether the document should be disclosed in the public interest.

31A Documents relating to IBAC

- (1) A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—
- (a) prejudice an investigation undertaken by the IBAC; or
 - (b) disclose, or enable a person to ascertain, the identity of any person or body (other than Victoria Police) who has provided information to the IBAC; or
 - (c) disclose methods or procedures for preventing, investigating or dealing with protected disclosures, complaints or notifications relating to corrupt conduct or police personnel conduct the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (d) endanger the lives or physical safety of persons engaged in or in connection with the IBAC's functions or persons who have provided information to the IBAC.

S. 31A
inserted by
No. 20/2017
s. 15.

- (2) In deciding whether a document is an exempt document under subsection (1), an agency or Minister, if practicable, must—
- (a) notify the IBAC that the agency or Minister has received a request for access to the document; and
 - (b) seek the IBAC's view as to whether the document should be disclosed.

Note

See also section 194 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

32 Documents affecting legal proceedings

- (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 (2AB), (2AC) or (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.

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

S. 33(2)
amended by
Nos 23/2017
s. 25(1),
11/2018
s. 35(1).

- (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.
- (2AB) Without limiting subsection (2A), if—
- (a) the request is made to an agency that is an information sharing entity or an authorised Hub entity, or to a Minister for access to an official document of an agency that is an information sharing entity or an authorised Hub entity; and
 - (b) the document contains information relating to the personal affairs of the person making the request; and
 - (c) the person making the request is a person of concern, or a person who is alleged to pose a risk of committing family violence—
- in deciding whether the disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person, the agency or Minister must also take into account whether the disclosure would increase the risk to a primary person's safety from family violence.

S. 33(2A)
inserted by
No. 57/1999
s. 6(1).

S. 33(2AB)
inserted by
No. 23/2017
s. 25(2).

S. 33(2AB)(a)
amended by
No. 11/2018
s. 45(1).

S. 33(2AC)
inserted by
No. 11/2018
s. 35(2).

(2AC) Without limiting subsection (2A), if—

S. 33(2AC)(a)
amended by
No. 11/2018
s. 45(2).

- (a) the request is made to an agency that is an information sharing entity, an authorised Hub entity or a restricted information sharing entity or to a Minister for access to an official document of an agency that is an information sharing entity, an authorised Hub entity or a restricted information sharing entity; and
- (b) the document contains information relating to the personal affairs of the person making the request—

in deciding whether the disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person, the agency or Minister must also take into account whether the disclosure would increase the risk to the safety of a child or group of children.

S. 33(2B)
inserted by
No. 20/2017
s. 16(1).

(2B) 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—

- (a) notify the person who is the subject of that information (or if that person is deceased, that person's next of kin) that the agency or Minister has received a request for access to the document; and
- (b) seek that person's view as to whether disclosure of the document should occur; and
- (c) state that if the person consents to disclosure of the document, or disclosure subject to deletion of information relating to the

personal affairs of the person, the person is not entitled to apply to the Tribunal for review of a decision to grant access to that document.

- (2C) Despite subsection (2B), an agency or Minister is not required to notify a person if—
- (a) the notification would be reasonably likely to endanger the life or physical safety of that person, or cause that person undue distress, or is otherwise unreasonable in the circumstances; or
 - (ab) the person to be notified is a primary person, and the notification would be reasonably likely to increase the risk to that person's safety from family violence; or
 - (b) it is not practicable to do so.
- (3) If 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, if practicable, must notify the person who is the subject of that information (or that person's next of kin) of the—
- (a) decision to grant access to the document; and
 - (b) right to make an application for review of the decision provided by section 50(3).
- (3A) An agency or Minister is not required to notify a person who has consented to disclosure of a document, or a document with deletions, of the decision to disclose that document or document with deletions (as the case requires).

S. 33(2C)
inserted by
No. 20/2017
s. 16(1).

S. 33(2C)(ab)
inserted by
No. 23/2017
s. 28.

S. 33(3)
amended by
No. 6/2012
s. 12(1),
substituted by
No. 20/2017
s. 16(2).

S. 33(3A)
inserted by
No. 20/2017
s. 16(2).

S. 33(4)
amended by
No. 23/1994
s. 118(Sch. 1
item 22.1),
substituted by
No. 2/2001
s. 101(2).

- (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
 - (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

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).

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(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—
- (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; S. 33(9) inserted by No. 38/1999 s. 4(2), substituted by No. 57/1999 s. 6(2).
- information sharing entity*—
- (a) in subsection (2AB), has the same meaning as in the **Family Violence Protection Act 2008**; and S. 33(9) def. of *information sharing entity* inserted by No. 23/2017 s. 25(3)(a). S. 33(9) def. of *information sharing entity* inserted by No. 11/2018 s. 35(4).

(b) in subsection (2AC), has the same meaning as in the **Child Wellbeing and Safety Act 2005**;

S. 33(9) def. of *person of concern* inserted by No. 23/2017 s. 25(3)(b).

person of concern has the meaning given in section 144B of the **Family Violence Protection Act 2008**;

S. 33(9) def. of *primary person* inserted by No. 23/2017 s. 25(3)(b), amended by No. 11/2018 s. 35(3).

primary person has the meaning given in section 144E of the **Family Violence Protection Act 2008**;

S. 33(9) def. of *restricted information sharing entity* inserted by No. 11/2018 s. 35(4).

restricted information sharing entity has the same meaning as in the **Child Wellbeing and Safety Act 2005**.

S. 33A inserted by No. 20/2017 s. 17, amended by No. 23/2017 s. 29 (ILA s. 39B(1)).

33A Notice requirement where person is a child—document affecting personal privacy or information communicated in confidence

- (1) For the purposes of sections 33 and 35, if the person who is required to be notified about a request is a child, the agency or Minister may notify either or both of the following—
 - (a) the child;
 - (b) a parent or guardian of the child.
- (2) An agency that is an information sharing entity or a Minister responsible for that agency must not notify a parent or guardian of a child under subsection (1) if—
 - (a) the child is a primary person; and

S. 33A(2) inserted by No. 23/2017 s. 29.

(b) the parent or guardian is a person of concern or is alleged to pose a risk of family violence to that child.

(3) In this section—

person of concern has the meaning given in section 144B of the **Family Violence Protection Act 2008**;

primary person has the meaning given in section 144E of the **Family Violence Protection Act 2008**.

S. 33A(3)
inserted by
No. 23/2017
s. 29.

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—

- (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—

- (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

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

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

(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
Nos 10155
s. 67(1)(c),
57/1999
s. 7(3), 6/2012
s. 12(2),
substituted by
No. 20/2017
s. 18.

- (3) An agency or Minister, in deciding whether the disclosure of information would expose an undertaking unreasonably to disadvantage, if practicable, must—
- (a) notify the undertaking that the agency or Minister has received a request for access to the document; and
 - (b) seek the undertaking's view as to whether disclosure of the document should occur; and
 - (c) state that if the undertaking consents to disclosure of the document, or disclosure subject to deletion of information likely to expose the undertaking to disadvantage, the undertaking is not entitled to apply to the Tribunal for review of a decision to grant access to that document.

S. 34(3A)
inserted by
No. 20/2017
s. 18.

- (3A) If the agency or Minister, after consultation, decides to disclose the document, the agency or Minister must notify the undertaking from which the document was acquired of the—
- (a) decision to grant access to the document; and
 - (b) right to make an application for review of the decision provided by section 50(3A).

(3B) An agency or Minister is not required to notify an undertaking that has consented to disclosure of a document, or a document with deletions, of the decision to disclose that document or document with deletions (as the case requires).

S. 34(3B)
inserted by
No. 20/2017
s. 18.

(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

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

the use or uses for which the document was prepared have not been completed.

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.

S. 35(1A)
inserted by
No. 20/2017
s. 19.

- (1A) An agency or Minister, in deciding whether a document is an exempt document under subsection (1), must—
- (a) notify the following that the agency or Minister has received a request for access to the document—
 - (i) the person or government that communicated the information or matter;
 - (ii) the person or government on whose behalf the information or matter was communicated; and
 - (b) seek the view of that person or government as to whether—
 - (i) the information or matter was communicated in confidence; and

- (ii) the disclosure of the information or matter would be contrary to the public interest for the reason set out in subsection (1)(b); and
 - (c) if notifying a person, state that if the person consents to disclosure of the document, or disclosure subject to deletion of the information or matter communicated in confidence, the person is not entitled to apply to the Tribunal for review of a decision to grant access to that document.
- (1B) Despite subsection (1A), an agency or Minister is not required to notify a person if—
 - (a) the notification would be reasonably likely to endanger the life or physical safety of that person, or cause that person undue distress, or is otherwise unreasonable in the circumstances; or
 - (b) it is not practicable to do so.
- (1C) If the agency or Minister, after consultation, decides to disclose the document, the agency or Minister must notify the person who communicated the information or matter, or on whose behalf the information or matter was communicated, of the—
 - (a) decision to grant access to the document; and
 - (b) right to make an application for review of the decision provided by section 50(3AB).
- (1D) An agency or Minister is not required to notify a person who has consented to disclosure of a document, or a document with deletions, of the decision to disclose that document or document with deletions (as the case requires).

S. 35(1B)
inserted by
No. 20/2017
s. 19.

S. 35(1C)
inserted by
No. 20/2017
s. 19.

S. 35(1D)
inserted by
No. 20/2017
s. 19.

- (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—

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

- (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 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

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

- (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.

- (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 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.

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

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—

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

- (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.
- (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);
- (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).

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

- (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.

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.

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

46 Where request refused

Where—

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

Pt 6 Div. 1
(Heading)
substituted by
No. 20/2017
s. 20.

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

49A Applications to Information Commissioner for review

S. 49A
(Heading)
amended by
No. 20/2017
s. 21(1).

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

(1) An applicant may apply to the Information Commissioner for review of—

S. 49A(1)
amended by
No. 20/2017
s. 21(3)(a).

(a) a decision of an agency or a Minister refusing to grant access to a document in accordance with a request; or

S. 49A(1)(a)
substituted by
No. 20/2017
s. 21(2),
amended by
Nos 20/2017
s. 21(3)(b),
2/2019
s. 198(1).

(b) a decision under section 24 by an agency or Minister deferring the provision of access to a document; or

S. 49A(1)(b)
amended by
No. 20/2017
s. 21(3)(b).

(c) a decision of an agency or Minister not to waive or reduce an application fee under section 17, whether or not the fee has already been paid by the applicant.

S. 49A(1)(c)
amended by
No. 20/2017
s. 21(3)(b).

S. 49A(2)
amended by
No. 20/2017
s. 21(3).

- (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 Information Commissioner for a review of a decision by an agency or Minister not to amend the document pursuant to a request under section 39.

S. 49A(3)
amended by
No. 20/2017
s. 21(3)(b),
repealed by
No. 20/2017
s. 21(4).

* * * * *

S. 49A(4)
amended by
Nos 20/2017
s. 21(3)(b)(5),
2/2019
s. 198(2).

- (4) An application cannot be made under this section in relation to a decision of an agency or a Minister refusing to grant access to a document on the basis that the document is claimed to be exempt under section 29A.

S. 49A(5)
amended by
Nos 20/2017
s. 21(3)(b)(6),
2/2019
s. 198(3).

- (5) If the decision of an agency or a Minister relates to a document that is claimed to be exempt under section 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 or Minister 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

S. 49B(1)
amended by
No. 20/2017
s. 22(1).

- (1) Subject to this section, an application by a person to the 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.
- (3) The Information Commissioner may accept an application for review made outside the period referred to in subsection (1) or (2) if satisfied that the application is made out of time because of an act or omission of the agency or Minister concerned.

S. 49B(3)
inserted by
No. 59/2014
s. 10,
amended by
No. 20/2017
s. 22.

49C Form of application

An application for review under this Division must—

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

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

S. 49C(b)(i)
amended by
No. 20/2017
s. 23.

49D Notice and copies of application for review

S. 49D
(Heading)
amended by
No. 59/2014
s. 11(1).

S. 49D
inserted by
No. 6/2012
s. 13,
amended by
No. 59/2014
s. 11(2)
(ILA s. 39B(1)).

S. 49D(1)
amended by
Nos 20/2017
s. 24, 2/2019
s. 199(1).

S. 49D(2)
inserted by
No. 59/2014
s. 11(2),
amended by
No. 20/2017
s. 24(1)(3).

S. 49D(3)
inserted by
No. 59/2014
s. 11(2),
amended by
Nos 20/2017
s. 24(1),
2/2019
s. 199(2).

- (1) The Information Commissioner must notify the principal officer of the agency or the Minister to which the application relates of the application for review.
- (2) At any time during a review, the Information Commissioner, with the consent of the applicant, may provide a copy of the application for review to an agency or the Minister affected by the review.
- (3) The Information Commissioner may provide a copy of the application to an agency or the Minister under subsection (2) on request by the agency or Minister or on the Commissioner's own initiative.

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

49E Parties to review

The parties to a review under this Division are—

S. 49E(b)
amended by
No. 20/2017
s. 25.

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

* * * * *

S. 49EA
inserted by
No. 59/2014
s. 12,
repealed by
No. 20/2017
s. 26.

49F Review of decision

Subject to this Division, the Information Commissioner may review the decision that is the subject of the application for review.

S. 49F
inserted by
No. 6/2012
s. 13,
substituted by
Nos 59/2014
s. 12, 20/2017
s. 27.

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

S. 49G
(Heading)
amended by
No. 20/2017
s. 28(1).

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

- (1) The 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
 - (e) the Commissioner is unable to contact the applicant following reasonable attempts to do so.

S. 49G(1)
amended by
No. 20/2017
s. 28(2).

S. 49G(2)
amended by
No. 20/2017
s. 28(2).

- (2) The Information Commissioner may dismiss a review if the applicant agrees in writing to the review being dismissed.

S. 49G(3)
amended by
No. 20/2017
s. 28(2)(3).

- (3) Unless subsection (1)(e) applies, the Information Commissioner must give notice to the applicant and the agency or Minister 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

S. 49H(1)
amended by
No. 20/2017
s. 29(1).

- (1) The Information Commissioner must conduct a review in a timely, efficient and fair manner, with as little formality and technicality as possible.

S. 49H(2)
amended by
No. 20/2017
s. 29(1).

- (2) The Information Commissioner must give each party to the review a reasonable opportunity to make submissions in writing in relation to the review.

S. 49H(3)
amended by
No. 20/2017
s. 29(1).

- (3) Subject to this section, the Information Commissioner is bound by the rules of natural justice in conducting a review.

S. 49H(4)
inserted by
No. 59/2014
s. 13,
amended by
No. 20/2017
s. 29.

- (4) The Information Commissioner may rely on advice and assistance provided by a member of staff of the Office of the Victorian Information Commissioner in—
- (a) making preliminary inquiries in relation to a review; and
 - (b) conducting a review; and
 - (c) making a fresh decision under section 49P on a review.

49I Agency or Minister must assist Information Commissioner

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

S. 49I
inserted by
No. 6/2012
s. 13,
substituted by
No. 20/2017
s. 30.

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

S. 49J
(Heading)
amended by
No. 20/2017
s. 31(1).

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

(1) This section applies if the Information Commissioner—

S. 49J(1)
amended by
No. 20/2017
s. 31(2).

(a) has not, within the required period, completed the review of a decision of an agency or Minister referred to in section 49A(1)(a) or (b) or (2); and

S. 49J(1)(a)
amended by
No. 20/2017
s. 31(3).

(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 Information Commissioner is taken, for the purposes of an application to the Tribunal for review, to have made a decision—

S. 49J(2)
amended by
No. 20/2017
s. 31(2).

(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.

S. 49J(3)
amended by
No. 20/2017
s. 31(2),
substituted by
No. 20/2017
s. 31(4).

(3) In this section the *required period* is—

(a) 30 days after the application for review by the Information Commissioner is received;
or

(b) if that period is extended or further extended, that period as extended.

S. 49J(4)
inserted by
No. 20/2017
s. 31(4).

(4) The Information Commissioner may extend the period referred to in subsection (3)(a) by agreement in writing with the applicant, any number of times.

S. 49J(5)
inserted by
No. 20/2017
s. 31(4).

(5) The period referred to in subsection (3)(a) cannot be extended or further extended under this section if that period has expired.

S. 49K
inserted by
No. 6/2012
s. 13,
amended by
No. 20/2017
s. 32.

49K Preliminary inquiries

The 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. 49KA
inserted by
No. 20/2017
s. 33.

49KA Power to require a further search for documents

(1) This section applies if the Information Commissioner reasonably believes that an agency or Minister has failed to undertake an adequate search for documents that relate to a decision that is the subject of a review under this Division.

- (2) During the review, the Information Commissioner may give a notice to an agency or Minister to require the agency or Minister—
- (a) in the case of a decision of an agency under section 25A(1) or 25A(5), to process or identify a reasonable sample of the documents to which the request relates; or
 - (b) in any other case, to further search or to cause a further search to be undertaken for documents in the possession, custody or control of the agency or Minister.
- (3) The agency or Minister must comply with a requirement of the Information Commissioner under subsection (2) within the reasonable period stated in the notice, being not less than 10 business days.
- (4) The Information Commissioner, on request of the agency or Minister, may extend the time for complying with a notice under subsection (2).
- (5) The Information Commissioner may specify any reasonable means or method for undertaking a further search under subsection (2)(b).

Example

The Information Commissioner may specify that the agency is required to undertake a search of the agency's email system by searching specified keywords.

- (6) The required period for completing the review under section 49J is suspended from the time the Information Commissioner gives a notice under subsection (2).

- (7) The agency or Minister must notify the Information Commissioner within 3 business days after the end of the period referred to in subsection (2) or (3) of the following information—
- (a) in the case of a notice under subsection (2)(a)—
 - (i) that the agency or Minister has processed or identified a reasonable sample of the documents; and
 - (ii) the nature of the documents processed or identified; and
 - (iii) whether the decision to refuse to grant access under section 25A(1) or 25A(5) is likely to be upheld;
 - (b) in the case of a notice under subsection (2)(b), that the agency or Minister has completed the further search and whether or not any further documents have been located.
- (8) After receiving a notification under subsection (7), the Information Commissioner may decide to refer the matter back to the agency or Minister in accordance with section 49L.

S. 49KB
inserted by
No. 20/2017
s. 33.

49KB Information Commissioner may issue notice to produce or attend

During a review under this Division, the Information Commissioner may issue a notice to produce or attend on a principal officer on behalf of an agency or Minister, in accordance with Part VIC.

49L Referral back to agency or Minister for reconsideration

S. 49L
(Heading)
amended by
No. 20/2017
s. 34(1).

S. 49L
inserted by
No. 6/2012
s. 13,
substituted by
No. 59/2014
s. 14.

- (1) This section applies if—
- (a) the Information Commissioner has done any of the following—
 - (i) made preliminary inquiries under section 49K;
 - (ii) required an agency or Minister to conduct a sampling search under section 49KA(2)(a), or a further search under section 49KA(2)(b);
 - (iii) issued a notice to produce or attend; and
 - (b) it appears to the Information Commissioner reasonably likely that the agency or Minister will be able to make a fresh decision in a way that is satisfactory to the applicant and in accordance with law.

S. 49L(1)
amended by
No. 20/2017
s. 34(2),
substituted by
No. 20/2017
s. 34(3).

- (1A) The Information Commissioner, with the agreement of the applicant, may refer the matter that is the subject of the application back to the agency or Minister for reconsideration in accordance with this section.

S. 49L(1A)
inserted by
No. 20/2017
s. 34(3).

- (2) The fresh decision must be made within 28 days after the referral under subsection (1) unless the agency and the Information Commissioner agree in writing to another period.

S. 49L(2)
amended by
No. 20/2017
s. 34(2).

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S. 49L(3)
amended by
No. 20/2017
s. 34(2).

(3) The required period for completing the review under section 49J is suspended from the time the Information Commissioner refers the matter back to the agency under subsection (1).

S. 49L(4)
amended by
No. 20/2017
s. 34(2).

(4) The agency must notify the Information Commissioner within 3 business days after the end of the period referred to in subsection (2) that—

- (a) a fresh decision has been made; or
- (b) a fresh decision has not been made.

(5) If the agency makes a fresh decision, the agency must—

- (a) revoke the earlier decision; and
- (b) inform the applicant, when notifying them of the fresh decision, of the requirements of subsection (6) and the effect of subsection (7).

S. 49L(6)
amended by
No. 20/2017
s. 34(2).

(6) Within 28 days after being notified of the fresh decision by the agency, the applicant must advise the Information Commissioner in writing whether the applicant agrees or does not agree with the decision.

S. 49L(7)
amended by
No. 20/2017
s. 34(2).

(7) If the applicant fails to advise the Information Commissioner under subsection (6) within the period specified in that subsection, the applicant is taken to agree with the fresh decision.

49M Reconsideration at agency's or Minister's own initiative

S. 49M
(Heading)
amended by
No. 20/2017
s. 35(1).

S. 49M
inserted by
No. 6/2012
s. 13,
substituted by
No. 59/2014
s. 14.

(1) During a review under this Division, an agency may notify in writing the Information Commissioner and the applicant that the agency is reconsidering the matter that is the subject of the review at the agency's or Minister's own initiative and, if so, the agency or Minister may make a fresh decision.

S. 49M(1)
amended by
No. 20/2017
s. 35(2)(3).

(2) The fresh decision must be made within 28 days after the notification under subsection (1) unless the agency or Minister and the Information Commissioner agree in writing to another period.

S. 49M(2)
amended by
No. 20/2017
s. 35(3).

(3) The required period for completing the review under section 49J is suspended from the time the agency or Minister notifies the Information Commissioner under subsection (1).

S. 49M(3)
amended by
No. 20/2017
s. 35(3).

(4) The agency or Minister must notify the Information Commissioner within 3 business days after the end of the period referred to in subsection (2) that—

S. 49M(4)
amended by
No. 20/2017
s. 35(3).

(a) a fresh decision has been made; or

(b) a fresh decision has not been made.

(5) If the agency or Minister makes a fresh decision, the agency or Minister must—

S. 49M(5)
amended by
No. 20/2017
s. 35(3)(b).

(a) revoke the earlier decision; and

- (b) inform the applicant, when notifying them of the fresh decision, of the requirements of subsection (6) and the effect of subsection (7).
- S. 49M(6) amended by No. 20/2017 s. 35(3).
- (6) Within 28 days after being notified of the fresh decision by the agency or Minister, the applicant must advise the Information Commissioner in writing whether the applicant agrees or does not agree with the decision.
- S. 49M(7) amended by No. 20/2017 s. 35(3)(a).
- (7) If the applicant fails to advise the Information Commissioner under subsection (6) within the period specified in that subsection, the applicant is taken to agree with the fresh decision.
- S. 49M(8) amended by No. 20/2017 s. 35(3)(b).
- (8) An agency or Minister may make a fresh decision under this section only once during a review under this Division.
- S. 49M(9) inserted by No. 20/2017 s. 35(4).
- (9) This section applies whether or not the Information Commissioner gives a notice under section 49KA or issues a notice to produce or attend.
- S. 49MA inserted by No. 59/2014 s. 14.
- 49MA Procedure after reconsideration under section 49L or 49M**
- S. 49MA(1) amended by No. 20/2017 s. 36(1).
- (1) If an applicant agrees with a fresh decision made by an agency or Minister under section 49L or 49M, the Information Commissioner must dismiss the review.
- S. 49MA(2) amended by No. 20/2017 s. 36(1)(a), substituted by No. 20/2017 s. 36(2).
- (2) Subject to subsection (4), if the applicant does not agree with the fresh decision the Information Commissioner must complete the review on the basis of the fresh decision within—
- (a) 30 days after the date on which the applicant advises the Commissioner under section 49L(6) or 49M(6) that the applicant does not agree with the fresh decision; or

- (b) if that period is extended or further extended, that period as extended.
- (3) Subject to subsection (4), if the agency does not make a fresh decision under section 49L or 49M within the period referred to in section 49L(2) or 49M(2) the Information Commissioner must recommence the review and complete the review within—
- S. 49MA(3) amended by No. 20/2017 s. 36(1), substituted by No. 20/2017 s. 36(3).**
- (a) 14 days after the earlier of—
- (i) the date on which the notice under section 49L(4) or 49M(4) is given; or
- (ii) the end of the period within which the notice under section 49L(4) or 49M(4) is required to be given; or
- (b) if that period is extended or further extended, that period as extended.
- (4) 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 29A.
- S. 49MA(4) amended by No. 20/2017 s. 36(4).**
- (5) The Information Commissioner may extend a period referred to in subsection (2)(a) or (3)(a) by agreement in writing with the applicant, any number of times.
- S. 49MA(5) inserted by No. 20/2017 s. 36(5).**
- (6) A period referred to in subsection (2)(a) or (3)(a) cannot be extended or further extended under this section if that period has expired.
- S. 49MA(6) inserted by No. 20/2017 s. 36(5).**

S. 49N
(Heading)
amended by
No. 20/2017
s. 37(1).

49N Information Commissioner may facilitate a negotiated agreement

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

S. 49N(1)
amended by
No. 20/2017
s. 37(2).

(1) The 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.

S. 49N(3)
amended by
No. 20/2017
s. 37(2).

(3) The Information Commissioner may make a decision on the review on the basis of the agreement.

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

49O Referral of matter to a relevant authority

S. 49O(1)
amended by
No. 20/2017
s. 38(1),
substituted by
No. 20/2017
s. 38(2).

(1) If the Information Commissioner identifies a matter arising out of or in relation to a review as being within the jurisdiction of a relevant authority, the Information Commissioner, after consulting with the relevant authority, may refer the matter to the relevant authority if the Information Commissioner considers it appropriate to do so.

S. 49O(2)
amended by
No. 20/2017
s. 38(1),
substituted by
No. 20/2017
s. 38(3).

(2) If the Information Commissioner identifies a matter arising out of or in relation to a review as being within the jurisdiction of the Information Commissioner under the **Privacy and Data Protection Act 2014**, the Information Commissioner, may decide to deal with the matter under that Act if the Commissioner considers it appropriate to do so.

- (3) The referral of, or decision in relation to, a matter under this section does not affect the role of the Information Commissioner in conducting a review under this Act. **S. 49O(3) amended by No. 20/2017 s. 38(1)(4).**
- (4) The Information Commissioner must notify the applicant in writing of a referral or a decision under this section that affects the interests of the applicant. **S. 49O(4) amended by No. 20/2017 s. 38(1)(5).**
- (5) In this section *relevant authority* means a person or body prescribed by the regulations for the purposes of this section.

49OA Review of decisions under section 25A(5)

S. 49OA inserted by No. 59/2014 s. 15.

- (1) In conducting a review of a decision of an agency or Minister under section 25A(5) to refuse to grant a request for access to documents, the Information Commissioner must determine whether to refuse to grant the request under section 25A(5) without requesting the agency or Minister to search for or otherwise identify the documents to which the request relates. **S. 49OA(1) amended by No. 20/2017 s. 39(1).**
- (2) Nothing in subsection (1) prevents the Information Commissioner giving a notice under section 49KA(2)(a). **S. 49OA(2) amended by No. 20/2017 s. 39(1)(b), substituted by No. 20/2017 s. 39(2).**

49P Decision on review

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

S. 49P(1)
amended by
No. 20/2017
s. 40(1).

(1) After conducting a review of a decision of an agency or Minister, the Information Commissioner must make a fresh decision on the original application.

S. 49P(2)
amended by
No. 20/2017
s. 40(1).

(2) The decision of the Information Commissioner has the same effect as a decision of the agency or Minister.

S. 49P(3)
amended by
No. 20/2017
s. 40(1)(a).

(3) The 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.

S. 49P(3A)
inserted by
No. 23/2017
s. 26.

(3A) If the review relates to a decision by an agency or a Minister to refuse to grant access to a document or part of a document on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to a primary person's safety from family violence, the Freedom of Information Commissioner may make the decision in terms that neither confirm nor deny the existence of that document.

S. 49P(3B)
inserted by
No. 11/2018
s. 36.

(3B) If the review relates to a decision by an agency or a Minister to refuse to grant access to a document or part of a document on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to the safety of a child or group of children, the Information Commissioner may make the decision in terms that neither confirm nor deny the existence of that document.

- (4) A decision requiring an agency or Minister to release a document does not take effect until—
- (a) if the decision requires release of a document of a kind referred to in section 33, 34 or 35 in respect of which a person has a right of review under section 50—
 - (i) 60 days after notice of the decision is given; or
 - (ii) if an application is made to the Tribunal within that 60 day period, until a decision is made on review; or
 - (b) if the decision requires release of any other document or a document to the extent that it does not include information of a kind referred to in section 33, 34 or 35 in respect of which a person has a right of review under section 50—
 - (i) 14 days after notice of the decision is given; or
 - (ii) if an application is made to the Tribunal within that 14 day period, until a decision is made on review.
- (5) If the Information Commissioner makes a decision to disclose a document that is claimed to be exempt under section 33, 34 or 35, the Commissioner must, if practicable, notify any person or undertaking who or which has a right to make an application for review of the decision under section 50(3), (3A) or (3B) (as the case requires) of the existence of that right.

S. 49P(4)
amended by
No. 20/2017
s. 40(1)(b),
substituted by
No. 20/2017
s. 40(2).

S. 49P(5)
amended by
Nos 59/2014
s. 16(1),
20/2017
s. 40(1)(a)(3).

S. 49P(6)
inserted by
No. 59/2014
s. 16(2),
amended by
No. 20/2017
s. 40(1)(a),
repealed by
No. 20/2017
s. 40(4).

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Pt 6 Div. 2
(Heading)
amended by
No. 22/2016
s. 172.

Division 2—Conciliation by Health Complaints Commissioner

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

49Q Conciliation by Health Complaints Commissioner

S. 49Q
(Heading)
amended by
No. 22/2016
s. 173.

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

S. 49Q(1)
amended by
No. 20/2017
s. 41(1).

(1) This section applies if a person has a right to apply for a review under section 49A of a decision of an agency or Minister in relation to a document containing health information relating to the person.

S. 49Q(2)
amended by
No. 22/2016
s. 174(a).

(2) Subject to subsection (4), the person may apply to the Health Complaints 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 Complaints 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 or the Minister to whom the request was made; and
 - (c) the Information Commissioner.

S. 49Q(6)
amended by
No. 22/2016
s. 174(b).

S. 49Q(6)(b)
amended by
No. 20/2017
s. 41(2)(a).

S. 49Q(6)(c)
amended by
No. 20/2017
s. 41(2)(b).

Division 3—Review by the Tribunal

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

50 Applications for review by the Tribunal

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

(1) Subject to this section, an applicant may apply to the Tribunal for review of—

S. 50(1)
repealed by
No. 10/155
s. 67(1)(e)(i),
new s. 50(1)
inserted by
No. 6/2012
s. 15(2).

S. 50(1)(a)
repealed by
No. 20/2017
s. 42(2)(c).

* * * * *

S. 50(1)(b)
amended by
No. 20/2017
s. 42(1).

(b) a decision of the Information Commissioner refusing to grant access to a document in accordance with a request;

S. 50(1)(c)
amended by
No. 20/2017
s. 42(1).

(c) a decision of the Information Commissioner deferring the provision of access to a document;

S. 50(1)(d)
amended by
No. 20/2017
s. 42(1)(2)(a).

(d) a decision of an agency or Minister refusing to grant access to a document in accordance with a request, if the Information Commissioner has made a determination under section 49G(1) in respect of that request;

S. 50(1)(e)
substituted by
No. 20/2017
s. 42(2)(b).

(e) a decision of an agency or a Minister refusing to grant access to a document that is claimed to be exempt under section 29A;

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| <p>(ea) a decision of an agency or a Minister refusing to grant access to a document or refusing to amend a document, or a decision of a principal officer refusing to specify a document in a statement, that is taken to have been made under section 53;</p> | <p>S. 50(1)(ea)
inserted by
No. 20/2017
s. 42(2)(b).</p> |
| <p>* * * * *</p> | <p>S. 50(1)(f)
repealed by
No. 20/2017
s. 42(2)(c).</p> |
| <p>(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 Information Commissioner has certified that the matter is one of sufficient importance for the Tribunal to consider.</p> | <p>S. 50(1)(g)
amended by
No. 20/2017
s. 42(1).</p> |
| <p>(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.</p> | <p>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).</p> |
| <p>(3) Subject to subsection (3AC), 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.</p> | <p>S. 50(3)
repealed by
No. 10155
s. 67(1)(e)(v),
new s. 50(3)
inserted by
No. 6/2012
s. 15(2),
substituted by
No. 20/2017
s. 42(3).</p> |

S. 50(3A)
inserted by
No. 6/2012
s. 15(2),
substituted by
No. 20/2017
s. 42(4).

(3A) Subject to subsection (3AC), 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.

S. 50(3AB)
inserted by
No. 20/2017
s. 42(4).

(3AB) Subject to subsection (3AC), a person who communicated information or a matter in confidence, or on whose behalf information or a matter was communicated (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 a document referred to in section 35(1).

S. 50(3AC)
inserted by
No. 20/2017
s. 42(4).

(3AC) A person or undertaking may not apply for review under subsection (3), (3A) or (3AB) if that person or undertaking consented to the disclosure of the document, and the document was disclosed in accordance with that consent.

Note

A person or undertaking may consent to disclosure of a document subject to the deletion of certain information in that document—see sections 33(2B), 34(3) and 35(1A).

S. 50(3B)
inserted by
No. 6/2012
s. 15(2),
amended by
No. 20/2017
s. 42(1).

(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 decision by the 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),
amended by
Nos 22/2016
s. 175, 20/2017
s. 42(5).

(3C) An applicant who has applied to the Health Complaints Commissioner under Division 2 for a conciliation in relation to a decision of an agency or Minister 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 or Minister if the matter is not conciliated under that Division.

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| (3D) An agency or Minister may apply to the Tribunal for review of a decision of the Information Commissioner under section 49P. | S. 50(3D) inserted by No. 6/2012 s. 15(2), amended by No. 20/2017 s. 42(1)(5). |
| * * * * * | S. 50(3E) inserted by No. 6/2012 s. 15(2), repealed by No. 59/2014 s. 17(1). |
| (3F) An agency or Minister must notify the Information Commissioner in writing as soon as practicable of an application for review under subsection (3D). | S. 50(3F) inserted by No. 6/2012 s. 15(2), amended by No. 20/2017 s. 42(1)(5). |
| (3FA) If an application for review is made under subsection (1)(b), (c), (d) or (g), the agency or Minister concerned must, as soon as practicable, notify the Information Commissioner in writing. | S. 50(3FA) inserted by No. 59/2014 s. 17(2), amended by No. 20/2017 s. 42(1)(5). |
| (3G) An application for review of a decision cannot be made under this section by a person if— | S. 50(3G) inserted by No. 6/2012 s. 15(2). |
| (a) a fresh decision has been made by the agency or Minister under Division 1 and the person has accepted the fresh decision; or | S. 50(3G)(a) amended by No. 20/2017 s. 42(5). |
| (b) the decision was made by the Information Commissioner in accordance with section 49N. | S. 50(3G)(b) amended by No. 20/2017 s. 42(1). |

S. 50(3H)
inserted by
No. 6/2012
s. 15(2),
amended by
No. 20/2017
s. 42(6).

- (3H) A person is not entitled to apply to the Tribunal for review of a decision in relation to which subsection (1), (3), (3A) or (3AB) 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.

S. 50(4)
amended by
Nos 10155
s. 67(1)(e)
(vi)(vii), 7/2003
s. 44(3),
20/2017
s. 42(7).

- (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), section 31A, 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.

S. 50(5)
amended by
Nos 10155
s. 67(1)(e)(vii),
20/2017
s. 42(8).

- (5) Where a certificate has been given in respect of a document under section 61ZA(2), 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.

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

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

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

51 Information Commissioner may be called on to assist Tribunal

S. 51
(Heading)
amended by
No. 20/2017
s. 43(1).

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

- (1) The Tribunal, on its own motion or on the application of the Information Commissioner, may call on the Commissioner to assist the Tribunal in respect of a review.

S. 51(1)
amended by
No. 20/2017
s. 43(3)(a).

- (1A) If a review under section 50 relates to a decision made by the Public Access Deputy Commissioner, the Tribunal, on its own motion or on the application of the Deputy Commissioner, may call on the Deputy Commissioner to assist the Tribunal in respect of the review.

S. 51(1A)
inserted by
No. 20/2017
s. 43(2).

- (2) Despite anything to the contrary in the **Victorian Civil and Administrative Tribunal Act 1998**, the 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 Information Commissioner as the principal officer of the office of the Information Commissioner.

S. 51(2)
amended by
No. 20/2017
s. 43(3)(a)¹.

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

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.

S. 52(1)
amended by
No. 20/2017
s. 44(2).

S. 52(3)
amended by
No. 20/2017
s. 44(3).

* * * * *

52 Time for applying for review

- (1) An application to the Tribunal under section 50(1)(e) 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), (3A) or (3AB) 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 Information Commissioner on the review is given to the applicant under Division 1. **S. 52(5) amended by No. 20/2017 s. 44(1).**
- (6) An application to the Tribunal under section 50(3B) in relation to a decision by the Information Commissioner must be made within 60 days from the day on which notice in writing of the decision of the Information Commissioner on the review is given to the applicant under Division 1. **S. 52(6) amended by No. 20/2017 s. 44(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 Information Commissioner under section 49G is given to the applicant. **S. 52(7) amended by No. 20/2017 s. 44(1).**
- (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 14 days from the day on which notice in writing of the decision under Division 1 is given to the agency or Minister. **S. 52(9) amended by No. 20/2017 s. 44(4).**

53 Reviews where decisions delayed

- (1) Subject to this section, where— **S. 53(1) amended by Nos 10155 s. 67(1)(h)(i)(ii), 20/2017 s. 45(2).**
- (a) a request has been made to an agency or Minister;

S. 53(1)(b)
amended by
No. 20/2017
s. 45(1).

- (b) the time period provided in section 21(1) 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—

for the purposes of making an application to the Tribunal under section 50(1)(ea), the agency or Minister is taken to have made a decision refusing to grant access to the document in accordance with the request or, in the case of a request under section 39, refusing to amend the document in accordance with the request, on the last day of the relevant period.

S. 53(2)
amended by
No. 10155
s. 67(1)(h)(i),
repealed by
No. 6/2012
s. 19,
new s. 53(2)
inserted by
No. 20/2017
s. 45(3).

- (2) Subject to this section, where—
 - (a) a notice has been served on the principal officer under section 12(1); and
 - (b) the time period provided in section 12(2) has elapsed; and
 - (c) notice of the principal officer's decision has not been received by the applicant—

for the purposes of making an application to the Tribunal under section 50(1)(ea), the principal officer is taken to have made a decision refusing to specify the document in a statement on the last day of that period.

S. 53(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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- (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 is given, subject to subsection (5A), 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.
- S. 53(5) amended by Nos 10155 s. 67(1)(h)(i)–(iii), 20/2017 s. 45(4).**
- (5A) Subsection (5) does not apply to—
- (a) a decision of the agency or Minister to grant access to the document without deferment; or
- (b) in the case of a request under section 39, a decision of the agency or Minister to amend the document in accordance with the request; or
- (c) in the case of a notice under section 12(1), a decision of the principal officer to specify the document in a statement.
- S. 53(5A) inserted by No. 20/2017 s. 45(5).**
- (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).**
- * * * * *
- S. 53(8) repealed by No. 20/2017 s. 45(6).**

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

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

- (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.
- (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), 31A 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), 31A 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.

S. 53AA(6)
amended by
No. 20/2017
s. 46.

S. 53AA(7)
amended by
No. 20/2017
s. 46.

**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
Nos 6/2012
s. 20(c),
20/2017
s. 47(a).

- (a) an agency or Minister or the Information Commissioner makes a decision refusing to grant access to a document; and

S. 53A(1)(a)
amended by
Nos 6/2012
s. 20(a),
20/2017
s. 47(a).

S. 53A(1)(c)
amended by
Nos 6/2012
s. 20(b),
20/2017
s. 47(b).

- (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)(b) or (d) for review of the decision—

the agency or Minister or the 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.

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.

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(1) (as amended by No. 82/2012 s. 153(1) (ILA s. 39B(1))).

55 Onus

- (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).
- (2) In proceedings under this Division (except under section 50(3D)), 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.

S. 55(1) amended by No. 6/2012 s. 21(1) (as amended by No. 82/2012 s. 153(1) (ILA s. 39B(1))).

S. 55(2) amended by Nos 10155 s. 67(1)(j), 6/2012 s. 21 (as amended by No. 82/2012 s. 153(1) (ILA s. 39B(1))).

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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

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

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

- (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(3)
amended by
Nos 10155
s. 67(1)(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),
amended by
No. 17/2014
s. 160(Sch. 2
item 45).

- (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, 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.

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

(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, section 31 or section 31A, 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(5)
amended by
Nos 10155
s. 67(1)(i)(i),
7/2003
s. 44(5),
6/2012
s. 12(4),
20/2017 s. 48.

(5A) If an application under section 50(1) or (3D) relates to a document or part of a document in relation to which disclosure has been refused on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to a primary person's safety from family violence, 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(5A)
inserted by
No. 23/2017
s. 27.

(6) If an application under section 50(1) or (3D) relates to a document or part of a document in relation to which disclosure has been refused on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to the safety of a child or group of children, 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),
new s. 56(6)
inserted by
No. 11/2018
s. 37.

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

59 Tribunal may reduce or waive charges

S. 59(1)
amended by
No. 6/2012
s. 21(1) (as
amended by
No. 82/2012
s. 153(1) (ILA
s. 39B(1))).

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

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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—

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

(a) if the person is the principal officer of a department or prescribed authority—the responsible Minister of that department or prescribed authority; or

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

(aa) if a person is the principal officer of a council—to the council;

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

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

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

S. 61(2)
inserted by
No. 6/2012
s. 23,
amended by
No. 20/2017
s. 49.

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

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

Part VIA—Complaints

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

61A Complaints

S. 61A(1)
amended by
No. 20/2017
s. 50(3).

(1) A complaint may be made to the Information Commissioner in accordance with this Part about any of the following—

S. 61A(1)(ab)
inserted by
No. 20/2017
s. 50(1)(a).

(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;

(ab) an action taken or failed to be taken by a principal officer in the performance or purported performance of the principal officer's functions and obligations under Part IB or II;

(b) a delay by a Minister in dealing with a request;

S. 61A(1)(ba)
inserted by
No. 20/2017
s. 50(1)(b).

(ba) a decision by a Minister that a document does not exist or cannot be located;

(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;

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- (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; **S. 61A(1)(e) amended by No. 20/2017 s. 50(1)(c).**
- (f) a failure by a Minister to comply with Ministerial professional standards. **S. 61A(1)(f) inserted by No. 20/2017 s. 50(1)(d).**
- (2) A complaint must—
- (a) be in writing; and
- (b) set out the nature of the complaint; and
- (c) identify the agency, principal officer or Minister concerned. **S. 61A(2)(c) amended by No. 20/2017 s. 50(2).**
- (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. 61A(5)
inserted by
No. 59/2014
s. 18,
amended by
No. 20/2017
s. 50(2)(3).

(5) The Information Commissioner may accept a complaint made outside the period referred to in subsection (4) if satisfied that the complaint is made out of time because of an act or omission of the agency, principal officer or Minister concerned.

S. 61AB
inserted by
No. 59/2014
s. 19,
repealed by
No. 20/2017
s. 51.

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S. 61B
(Heading)
amended by
No. 20/2017
s. 52(1).

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

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

S. 61B(1)
amended by
No. 20/2017
s. 52(4).

(1) The 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

S. 61B(1)(a)(ia)
inserted by
No. 20/2017
s. 52(2).

(ia) a matter referred to in section 61A(1)(ab);

(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.

S. 61B(2)
amended by
No. 20/2017
s. 52(4).

(2) Without limiting subsection (1)(b), the 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;
 - (ab) the action or failure by a principal officer was not in the performance by the principal officer of the principal officer's functions or obligations under Part IB or II; **S. 61B(2)(ab) inserted by No. 20/2017 s. 52(3).**
 - (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 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 Information Commissioner or the Tribunal. **S. 61B(3) amended by No. 20/2017 s. 52(4).**
- (4) If the Information Commissioner dismisses a complaint, the Commissioner must give written notice to the complainant setting out the grounds for dismissing the complaint. **S. 61B(4) amended by No. 20/2017 s. 52(4).**

61C Referral of complaint to another body

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

S. 61C(1)
amended by
No. 20/2017
s. 53(1).

(1) This section applies if the 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.

S. 61C(2)
amended by
No. 20/2017
s. 53(1).

(2) If the 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.

S. 61C(2A)
inserted by
No. 20/2017
s. 53(2).

(2A) The Information Commissioner may communicate to a person or body to whom or which a complaint is referred any information obtained or received in the course or as a result of the exercise of the functions of the Information Commissioner under this Part, being information relating to a complaint referred to the person or body.

S. 61C(2B)
inserted by
No. 20/2017
s. 53(2).

(2B) The Information Commissioner may decide to deal with a complaint as if it were a complaint made under the **Privacy and Data Protection Act 2014** if the Information Commissioner considers that the complaint could be dealt with more effectively or appropriately under that Act.

S. 61C(3)
amended by
No. 20/2017
s. 53(1)(3).

(3) If the Information Commissioner refers a complaint to a person or body under this section, or decides to deal with the complaint under the **Privacy and Data Protection Act 2014**, the Commissioner must give notice in writing to the complainant.

S. 61C(4)
amended by
No. 20/2017
s. 53(1).

(4) The notice must set out the decision of the Information Commissioner and the reasons for the decision.

61D Notice of decision to investigate complaint

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

(1) If the 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.

S. 61D(1)
amended by
No. 20/2017
s. 54.

(2) The notice must be accompanied by a copy of the written complaint.

(3) The 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.

S. 61D(3)
amended by
No. 20/2017
s. 54.

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

S. 61E
inserted by
No. 6/2012
s. 24,
substituted by
No. 20/2017
s. 55.

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

61F Complaint must be dealt with in private

The Information Commissioner must deal with a complaint in private.

S. 61F
inserted by
No. 6/2012
s. 24,
amended by
No. 20/2017
s. 56.

61G Preliminary inquiries and consultation

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

(1) If the Information Commissioner accepts a complaint, the Commissioner may—

S. 61G(1)
amended by
No. 20/2017
s. 57(a).

(a) conduct preliminary inquiries into the complaint; and

S. 61G(1)(b)
amended by
No. 20/2017
s. 57(b).

- (b) consult with the agency to which, or the principal officer or 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.

S. 61G(2)
repealed by
No. 20/2017
s. 57(2).

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S. 61GA
inserted by
No. 20/2017
s. 58.

61GA Power to require a further search for documents

- (1) If, when dealing with a complaint under this Part, the Information Commissioner reasonably believes that an agency, principal officer or Minister has failed to undertake an adequate search for documents that relate to a decision that is the subject of the complaint, the Information Commissioner may give a notice to an agency, principal officer of an agency or Minister to require that agency, principal officer or Minister—
 - (a) in the case of a decision of an agency or Minister under section 25A(1) or (5), to process or identify a reasonable sample of the documents to which the request relates; or

- (b) in any other case, to further search or to cause a further search to be undertaken for documents in the possession, custody or control of the agency or Minister.
- (2) The agency, principal officer or Minister must comply with a requirement of the Information Commissioner under subsection (1) within the reasonable period stated in the notice, being not less than 10 business days.
- (3) The Information Commissioner, on request of the agency or Minister, may extend the time for complying with a notice under subsection (1).
- (4) The Information Commissioner may specify any reasonable means or method for undertaking a further search under subsection (1)(b).

Example

The Information Commissioner may specify that the agency is required to undertake a search of the agency's email system by searching specified keywords.

61GB Informal resolution

If the Information Commissioner determines that a complaint can be resolved informally, the Information Commissioner must take reasonable steps to resolve the complaint.

S. 61GB
inserted by
No. 20/2017
s. 58.

61H Conciliation of complaint

- (1) If a complaint cannot be resolved informally, the Information Commissioner must use his or her best endeavours to conciliate the complaint.

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

S. 61H(1)
amended by
No. 20/2017
s. 59(2).

S. 61H(2)
amended by
No. 20/2017
s. 59.

- (2) If a written agreement is reached between the agency or the principal officer or Minister (as the case requires) and the complainant, the 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—

S. 61I(1)(a)
amended by
No. 20/2017
s. 60(2).

- (a) the Information Commissioner has tried but failed to conciliate a complaint; and

S. 61I(1)(b)
amended by
No. 20/2017
s. 60(2).

- (b) the Information Commissioner is satisfied that there is no reasonable likelihood that the complaint will be resolved by conciliation.

S. 61I(2)
amended by
No. 20/2017
s. 60(1)(2).

- (2) The Information Commissioner must allow the complainant and the agency or the principal officer or Minister (as the case requires) a reasonable opportunity to make submissions in relation to the complaint, whether orally or in writing.

S. 61I(3)
amended by
No. 20/2017
s. 60(2).

- (3) The Information Commissioner must deal with the complaint with as little formality and technicality as possible.

S. 61I(4)
amended by
No. 20/2017
s. 60(2),
substituted by
No. 20/2017
s. 60(3).

- (4) If, after considering any submissions, the Information Commissioner considers that the complaint is unable to be dealt with in accordance with subsection (3) and that further information is required in order for the Information Commissioner to deal with the complaint, the Commissioner may serve on a principal officer, on the officer's own behalf or on behalf of an agency, or a Minister a notice to produce or attend, in accordance with Part VIC.

- (5) The Information Commissioner may rely on advice and assistance provided by a member of staff of the Office of the Victorian Information Commissioner in—
- (a) conducting preliminary inquiries into a complaint; and
 - (b) otherwise dealing with a complaint; and
 - (c) making recommendations under section 61L in relation to a complaint.

S. 61I(5)
inserted by
No. 59/2014
s. 20,
amended by
No. 20/2017
s. 60(2)(4).

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S. 61J
inserted by
No. 6/2012
s. 24,
repealed by
No. 20/2017
s. 61.

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S. 61K
inserted by
No. 6/2012
s. 24,
repealed by
No. 20/2017
s. 62.

61L Outcome of complaint

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

- (1) After considering the complaint and any submissions and documents received in relation to the complaint, the Information Commissioner may make any recommendations to the agency, the principal officer 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.

S. 61L(1)
amended by
No. 20/2017
s. 63(1)(2).

Freedom of Information Act 1982
No. 9859 of 1982
Part VIA—Complaints

S. 61L(3)
amended by
No. 20/2017
s. 63(1)(2).

(3) The Information Commissioner must notify the agency, the principal officer 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, the principal officer or Minister in relation to the complaint.

S. 61L(4)
amended by
No. 20/2017
s. 63(1).

(4) The 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.

S. 61L(5)
amended by
No. 20/2017
s. 63(1)(3).

(5) If the Information Commissioner intends to make a recommendation that relates to, or a comment about, an agency, principal officer, Minister, person or body, the Commissioner must give the agency, principal officer, Minister, person or body the opportunity to comment on and respond to the draft recommendation or draft comment before making the recommendation or comment.

S. 61L(6)
amended by
No. 20/2017
s. 63(1)(3).

(6) The Information Commissioner must take into account any response received by an agency, principal officer, Minister, person or body under subsection (5) in making a recommendation or any adverse comment under this section.

S. 61L(7)
amended by
No. 20/2017
s. 63(1)(3).

(7) The 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, principal officer, Minister, person or body, any comments received from the agency, principal officer, Minister, person or body under subsection (5).

(8) If the 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.

S. 61L(8)
amended by
No. 20/2017
s. 63(1).

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S. 61L(9)
inserted by
No. 59/2014
s. 21,
amended by
No. 20/2017
s. 63(1),
repealed by
No. 20/2017
s. 63(4).

61M Complaints notified or referred by other bodies

The Information Commissioner may treat a complaint—

- (a) notified by the Ombudsman under section 16G of the **Ombudsman Act 1973**;
or
- (b) referred by the Health Complaints Commissioner under section 51 of the **Health Records Act 2001**—

S. 61M
inserted by
No. 6/2012
s. 24,
substituted by
No. 82/2012
s. 252,
amended by
Nos 60/2014
s. 140(Sch. 3
item 20.3),
22/2016 s. 176,
substituted by
No. 20/2017
s. 64.

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

* * * * *

S. 61N
inserted by
No. 6/2012
s. 24,
repealed by
No. 20/2017
s. 65.

Pt 6B
(Headings
and ss 61O–
61T)
inserted by
No. 20/2012
s. 66.

Part VIB—Investigations

Division 1—Investigations

S. 61O
inserted by
No. 20/2017
s. 66.

61O Information Commissioner may conduct investigation

- (1) The Information Commissioner may, on the Commissioner's own motion, conduct an investigation in respect of—
 - (a) the performance or exercise of a function or obligation, under this Act, by an agency or principal officer; or
 - (b) the failure to perform or exercise a function or obligation, under this Act, by an agency or principal officer; or
 - (c) the purported performance or purported exercise of a function or obligation, under this Act, by an agency or principal officer.
- (2) The Information Commissioner may not conduct an investigation in respect of—
 - (a) any action taken or a failure to take an action by—
 - (i) a Minister; or
 - (ii) a person employed as a Ministerial officer under Part 6 of the **Public Administration Act 2004**; or
 - (b) any action taken or a failure to take an action by an agency or principal officer, in the performance or purported performance of a Minister's functions or obligations under this Act.

61P Conduct of investigation

- (1) An investigation under this Part must be conducted in private.
- (2) During an investigation, the Information Commissioner may serve on a person, a notice to produce or attend, in accordance with Part VIC.

S. 61P
inserted by
No. 20/2017
s. 66.

Division 2—Reporting of investigation

61Q Investigation report

As soon as practicable after the completion of an investigation, the Information Commissioner must make a report of the findings of the investigation.

S. 61Q
inserted by
No. 20/2017
s. 66.

61R Content of investigation report

- (1) The Information Commissioner must not include in a report under this Division—
 - (a) any information that the Information Commissioner reasonably believes would prejudice a criminal investigation, criminal proceedings or any investigation by the IBAC or the Victorian Inspectorate; or
 - (b) any information that—
 - (i) if included in a document would make that document an exempt document in accordance with section 28 or 29A; or
 - (ii) is subject to legal professional privilege or client legal privilege; or
 - (c) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
 - (d) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

S. 61R
inserted by
No. 20/2017
s. 66.

- (2) If the Information Commissioner intends to include in a report under this Division a comment or opinion that is adverse to any person, the Information Commissioner must first give the person a reasonable opportunity to respond to the adverse material, and must fairly set out each element of the person's response in the report.
- (3) If the Information Commissioner intends to include in a report under this Division a comment or opinion that is not adverse to a person, the Information Commissioner must first provide that person with the relevant material in relation to which the Information Commissioner intends to name that person.
- (4) If the Information Commissioner intends to include in a report under this Division any adverse finding about an agency, the Information Commissioner must first give the principal officer of that agency a reasonable opportunity to respond to the adverse material, and must fairly set out each element of the response in the report.
- (5) The Information Commissioner must not include in a report under this Division any information that would identify any person who is not the subject of any adverse comment or opinion unless the Information Commissioner—
 - (a) is satisfied that—
 - (i) it is necessary or desirable to include the information in the public interest; and
 - (ii) including the information will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
 - (b) states in the report that the person is not the subject of any adverse comment or opinion.

61S Legal advice and representation—investigation report

S. 61S
inserted by
No. 20/2017
s. 66.

A person may seek legal advice, and be represented by, a legal practitioner in relation to a proposed report, or draft or part of a proposed report under this Division that is received by the person.

61T Tabling of report in Parliament

S. 61T
inserted by
No. 20/2017
s. 66.

- (1) The Information Commissioner may cause a report to be transmitted to each House of the Parliament as soon as practicable after the investigation report has been completed.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House of the Parliament on the day on which it is received or on the next sitting day of the House of the Parliament.
- (3) If the Information Commissioner proposes to transmit a report to the Parliament on a day on which neither House of the Parliament is sitting, the Information Commissioner must—
 - (a) give one business day's notice of the intention to do so to the clerk of each House of the Parliament; and
 - (b) give the report to the clerk of each House of the Parliament on the day indicated in the notice; and
 - (c) publish the report on the Internet site of the Office of the Victorian Information Commissioner as soon as practicable after giving it to the clerks.

- (4) The clerk of each House of the Parliament must—
- (a) notify each member of the House of the Parliament of the receipt of a notice under subsection (3)(a) on the same day that the clerk receives that notice; and
 - (b) give a copy of a report to each member of the House of the Parliament as soon as practicable after the report is received under subsection (3)(b); and
 - (c) cause the report to be laid before the House of the Parliament on the next sitting day of the House of the Parliament.

Part VIC—Coercive powers

Pt 6C
(Heading and
ss 61U–61ZG)
inserted by
No. 20/2012
s. 66.

61U Notice to produce or attend

S. 61U
inserted by
No. 20/2017
s. 66.

- (1) A notice to produce or attend may require a person—
 - (a) to produce a specified document to the Information Commissioner by or before a specified time and in a specified manner; or
 - (b) to attend at a specified time and place on a specified date to produce documents to the Information Commissioner; or
 - (c) to attend an examination before the Information Commissioner to give evidence and to produce documents at a specified time and place on a specified date; or
 - (d) to attend the Information Commissioner at a specified time and place to produce a specified document.
- (2) A notice under this section must contain the following information—
 - (a) a statement that—
 - (i) failure to comply with the notice without reasonable excuse may be an offence; and
 - (ii) includes the maximum penalty for that offence;
 - (b) examples of what may constitute a reasonable excuse for failing to comply with the notice.

S. 61V
inserted by
No. 20/2017
s. 66.

61V Variation or revocation of a notice to produce or attend

- (1) The Information Commissioner, by further written notice served on a person, may at any time vary or revoke a notice to produce or attend served on the person.
- (2) A notice varying or revoking a notice to produce or attend must be served in accordance with section 61W.

S. 61W
inserted by
No. 20/2017
s. 66.

61W Service of notice to produce or notice to attend

- (1) Subject to subsection (2), a notice to produce or attend must be served at a reasonable time, being not less than 7 days before the date on which the person is required to attend or otherwise comply with the notice.
- (2) The Information Commissioner may serve a notice to attend requiring immediate attendance by a person if—
 - (a) the Information Commissioner considers on reasonable grounds that a delay in the person's attendance is likely to result in—
 - (i) a document or thing being lost or destroyed; or
 - (ii) the commission of an offence; or
 - (iii) the escape of the person on whom the notice is served; or
 - (iv) serious prejudice to the conduct of the inquiry to which the notice relates; or
 - (b) the person on whom the notice is served consents to immediate attendance.
- (3) A notice to produce or attend directed to a natural person must be served by serving a copy of the notice on the person personally.

- (4) A notice to produce or attend directed to a body corporate must be served by leaving a copy of the notice at the registered office or principal place of business of the body corporate with a person apparently employed at that office or place and who is apparently at least 18 years of age.
- (5) Subsection (4) is in addition to, and not in derogation of, sections 109X and 601CX of the Corporations Act.

61X Failure to comply with notice to produce or attend

S. 61X
inserted by
No. 20/2017
s. 66.

A person who is served with a notice to produce or attend must not, without reasonable excuse, refuse or fail to comply with a requirement set out in the notice—

- (a) to attend before the Information Commissioner; or
- (b) to give information; or
- (c) to answer a question or produce a document.

Penalty: 60 penalty units.

61Y Reasonable excuse—self incrimination

S. 61Y
inserted by
No. 20/2017
s. 66.

Without limiting what is a reasonable excuse for the purposes of section 61X, it is a reasonable excuse to refuse or fail to comply with a requirement of the notice if the giving of the information or production of the document may tend to incriminate the person.

61Z Reasonable excuse—documents affecting national security, defence or international relations

S. 61Z
inserted by
No. 20/2017
s. 66.

Without limiting what is a reasonable excuse for the purposes of section 61X, it is a reasonable excuse for a person to refuse or fail to comply with a requirement set out in the notice if the information or document—

- (a) is an exempt document under section 29A; or

- (b) is information that if included in a document would make that document an exempt document under section 29A.

S. 61ZA
inserted by
No. 20/2017
s. 66.

61ZA Reasonable excuse—cabinet documents and legal professional privilege

- (1) Subject to subsection (3), and without limiting what is a reasonable excuse for the purposes of section 61X, it is a reasonable excuse for a person to refuse or fail to comply with a requirement set out in the notice if—
- (a) the information or document—
 - (i) is an exempt document under section 28; or
 - (ii) is information that if included in a document would make that document an exempt document under section 28; or
 - (b) the information or document—
 - (i) is an exempt document under section 32; or
 - (ii) is information that if included in a document would make that document an exempt document under section 32.
- (2) The Secretary to the Department of Premier and Cabinet may certify that information or a document described in subsection (1)(a)—
- (a) in the case of information, is information which, if included in a document, would make the document an exempt document of a kind referred to in section 28(1);
 - (b) in the case of a document, is or, if it existed, would be an exempt document of a kind referred to in section 28(1).

- (3) If a notice to produce or attend is served on a person during a review of a decision that relates to a document claimed to be exempt under section 28 or 32, it is not a reasonable excuse for a person to refuse or fail to comply with the notice for the reason that the information or document—
- (a) is an exempt document under section 28 or 32; or
 - (b) is information that if included in a document would make that document an exempt document under section 28 or 32.

61ZB Production under notice of document claimed to be exempt under section 28, 31 or 31A

S. 61ZB
inserted by
No. 20/2017
s. 66.

- (1) This section applies if—
- (a) a person is required under this Part to produce a document under a notice to produce or attend; and
 - (b) that document is claimed to be exempt under section 28, 31 or 31A.
- (2) The person must produce the document for inspection by the Information Commissioner at the premises of the agency which, or Minister who, made the claim that the document is exempt, within the timeframe specified by the Information Commissioner.
- (3) A person who produces a document for inspection in accordance with subsection (2)—
- (a) is taken to comply with the notice to produce or attend; and
 - (b) does not commit an offence against section 61X.

S. 61ZC
inserted by
No. 20/2017
s. 66.

61ZC Statutory secrecy not a reasonable excuse

- (1) It is not a reasonable excuse for the purposes of section 61X for a person to refuse or fail to comply with a requirement of the Information Commissioner as a result of—
 - (a) any obligation imposed on that person, by any enactment or rule of law, to maintain secrecy in relation to the production of the document, information or the answer to a question; or
 - (b) any restriction imposed on that person, by any enactment or rule of law, that prohibits the disclosure of the document, information or the answer to a question.
- (2) Nothing in this section affects the operation of—
 - (a) Part 7 of the **Protected Disclosure Act 2012**; or
 - (b) Division 3 of Part 2 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

S. 61ZD
inserted by
No. 20/2017
s. 66.

61ZD Office of the Information Commissioner to report to the Victorian Inspectorate on issue of notice to produce or attend

Within 3 days after the issue of a notice to produce or attend, the Information Commissioner must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person to whom the notice relates; and
- (b) the reasons why the notice was issued.

61ZE Power to take evidence on oath or affirmation

S. 61ZE
inserted by
No. 20/2017
s. 66.

- (1) The Information Commissioner may require a person attending an examination, in accordance with a notice to attend, to give evidence or answer questions on oath or affirmation.
- (2) The Information Commissioner, or a person authorised to do so by the Commissioner, may administer an oath or affirmation to a person for the purposes of subsection (1).
- (3) A person must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so by the Information Commissioner under subsection (1).

Penalty: 60 penalty units.

- (4) A person does not commit an offence against subsection (3) unless, before the person is required to take the oath or make the affirmation, the Information Commissioner informs the person that refusal or failure to do so without reasonable excuse is an offence.

61ZF Legal advice and representation

S. 61ZF
inserted by
No. 20/2017
s. 66.

A person may seek legal advice, and be represented by, a legal practitioner in relation to—

- (a) a notice to produce or attend that is directed to the person; and
- (b) the person's rights, liabilities, obligations and privileges in relation to the notice to produce or attend.

S. 61ZG
inserted by
No. 20/2017
s. 66.

**61ZG Protection of legal practitioners and persons—
notice to produce or attend**

- (1) A legal practitioner representing the person who is served with a notice to produce or attend has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (2) A person who is served with a notice to produce or attend has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

Part VII—Miscellaneous

Division 1—Protections in relation to legal action

62 Protection against actions for defamation or breach of confidence

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

(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.

(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".

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

(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.

S. 62(3)
inserted by
No. 6/2012
s. 26(2),
substituted by
No. 20/2017
s. 67.

- (3) The provision of access to a document in accordance with—
- (a) a request by the Information Commissioner;
or
 - (b) a notice under section 49KA or 61GA(1); or
 - (c) a notice to produce or attend—
- 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—

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

- (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—

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.

S. 63A
inserted by
No. 6/2012
s. 28,
substituted by
No. 20/2017
s. 68.

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

- (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 functions under Part VI, VIA or VIB or in acting for or on behalf of a person in the performance of those functions—

- (a) the Information Commissioner;
 - (b) the Public Access Deputy Commissioner;
 - (c) a member of staff of the Office of the Victorian Information Commissioner;
 - (d) a contractor, agent or other person acting for or on behalf of the Information Commissioner or the Public Access Deputy Commissioner.
- (2) This section does not apply to—
- (a) a criminal proceeding; or
 - (b) a proceeding under section 63BA; or
 - (c) a proceeding involving a claim that the Information Commissioner does not have the jurisdiction to compel the production of documents.

63B Protection of person making complaint

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

S. 63B
inserted by
No. 6/2012
s. 28,
amended by
No. 20/2017
s. 69.

63BA Application to Supreme Court

- (1) If a question arises as to whether the Information Commissioner or the Public Access Deputy Commissioner has jurisdiction to serve a notice to produce or attend on an agency, principal officer or a Minister under this Act, the Information Commissioner or, subject to subsection (2), the Public Access Deputy Commissioner or the agency, principal officer or Minister may apply to the Supreme Court for determination of that question.

S. 63BA
inserted by
No. 20/2017
s. 70.

- (2) The Public Access Deputy Commissioner may only apply for determination under this section in relation to a notice to produce or attend served by the Deputy Commissioner.
- (3) The Supreme Court may make any order it considers proper in relation to an application under subsection (1).
- (4) A Minister may, or a principal officer may, on behalf of the agency or, if the notice to produce or attend is served on the principal officer, on the officer's own behalf—
 - (a) make an application under this section; and
 - (b) be a party to an application by the Information Commissioner under this section.
- (5) Nothing in this section limits any application an agency, principal officer or Minister may make to the Supreme Court in respect of the issuing of a notice to produce or attend.

**Division 2—Production of documents to
Information Commissioner**

Pt 7 Div. 2
(Heading and
ss 63C, 63D)
inserted by
No. 6/2012
s. 29,
amended by
Nos 70/2013
s. 3(Sch. 1
item 16),
59/2014
ss 22, 23,
substituted as
Pt 7 Div. 2
(Heading and
ss 63C–63E)
by
No. 20/2017
s. 71.

63C Application of Division

This Division applies to a document that is claimed to be an exempt document and is, or is to be, produced to the Information Commissioner in the course of the Information Commissioner—

- (a) conducting a review under Division 1 of Part VI; or
- (b) dealing with a complaint under Part VIA; or
- (c) conducting an investigation under Part VIB.

S. 63C
substituted by
No. 20/2017
s. 71.

**63D Special requirements for production of documents
claimed to be exempt under section 28, 29A,
31 or 31A**

- (1) This section applies to the production of a document that is claimed to be exempt under section 28, 29A, 31 or 31A.
- (2) The document may only be inspected at the premises of the agency which, or the Minister who, made the claim that the document is exempt.
- (3) The Information Commissioner is not entitled to possession of, or to make copies of, the document.

S. 63D
substituted by
No. 20/2017
s. 71.

S. 63E
inserted by
No. 20/2017
s. 71.

63E Use of documents claimed to be exempt

- (1) The Information Commissioner must do all things necessary to ensure that only a specified person has access to the document or its contents.
- (2) A person who is or has been a specified person must not intentionally or recklessly disclose the document or its contents to any person other than—
 - (a) to 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) to a representative of the agency or Minister who produced the document.

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

- (3) A specified person may, to the extent practicable without disclosing any exempt matter, disclose the nature of the document to the applicant for review or the complainant (as the case requires) if—
 - (a) the specified person considers that the disclosure may assist in the resolution of the review or complaint; and
 - (b) the agency head, principal officer or Minister, or a person nominated by the agency head, principal officer or Minister, gives prior written consent to the disclosure.
- (4) Subject to section 63D, the Information Commissioner may copy the document, but only to the extent necessary for the performance of the Information Commissioner's functions in conducting the review, complaint or investigation.

- (5) On completion of the review, complaint or investigation process, the Information Commissioner must—
- (a) return the document to the agency that produced it; and
 - (b) return to that agency, or destroy, any copies of the document.

- (6) In this section—

former Commissioner means a person who was appointed as—

- (a) the Freedom of Information Commissioner; or
- (b) an Assistant Commissioner;

specified person means—

- (a) the Information Commissioner; or
- (b) the Public Access Deputy Commissioner; or
- (c) a member of staff of the Office of the Victorian Information Commissioner; or
- (d) a former Commissioner, acting former Commissioner or employee, contractor or agent employed or engaged by a former Commissioner.

Division 2A—Offences

Pt 7 Div. 2A
(Heading and
ss 63F, 63G)
inserted by
No. 20/2017
s. 71.

S. 63F
inserted by
No. 20/2017
s. 71.

63F Offence to obstruct, mislead or provide false information

- (1) A person must not, without reasonable excuse, wilfully obstruct, hinder or resist the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner or a member of staff of the Office of the Victorian Information Commissioner, in—
 - (a) performing, or attempting to perform, a function or duty under this Act; or
 - (b) exercising, or attempting to exercise, a power under this Act.

Penalty: 60 penalty units.

- (2) A person must not, without reasonable excuse, provide information or make a statement to the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner, or a member of staff of the Office of the Victorian Information Commissioner knowing that it is false or misleading in a material particular.

Penalty: 60 penalty units.

- (3) A person must not, without reasonable excuse, mislead or attempt to mislead the Information Commissioner, the Public Access Deputy Commissioner, a delegate of the Information Commissioner or the Public Access Deputy Commissioner, or a member of staff of the Office of the Victorian Information Commissioner.

Penalty: 60 penalty units.

63G Prosecutions

**S. 63G
inserted by
No. 20/2017
s. 71.**

- (1) A proceeding for an offence against this Act may be commenced by—
- (a) a member of the police force; or
 - (b) the Information Commissioner; or
 - (c) any other person authorised to do so by the Information Commissioner.
- (2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

Division 3—Reporting

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

64 Reporting by Information Commissioner

S. 64
(Heading)
substituted by
No. 20/2017
s. 72(1),
amended by
No. 2/2019
s. 200.

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.

S. 64(1)
amended by
No. 20/2017
s. 72(2).

- (1) As soon as practicable after the end of each financial year, the 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;
- (d) the number of applications for review of a decision by the Information Commissioner under Division 1 of Part VI and the decisions on the applications; **S. 64(2)(d) amended by No. 20/2017 s. 72(2).**
- (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 Information Commissioner under Part VIA; **S. 64(2)(f) amended by No. 20/2017 s. 72(2).**
- (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;

S. 64(2)(i)
amended by
No. 20/2017
s. 72(2).

- (i) details of any recommendations made by the 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.

S. 64(3)
amended by
No. 20/2017
s. 72(3).

- (3) The report may include a report on the performance and exercise of the 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).

S. 64(5)
amended by
No. 20/2017
s. 72(2).

- (5) The 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 Information Commissioner under the **Financial Management Act 1994** for that year is laid before that House.

64A Reports to Integrity and Oversight Committee

S. 64A
(Heading)
substituted by
No. 20/2017
s. 73(1),
amended by
No. 2/2019
ss 195(1), 201.

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

(1) The Information Commissioner must report to the Integrity and Oversight Committee of the Parliament—

S. 64A(1)
amended by
Nos 20/2017
s. 73(2)(b),
2/2019
s. 195(2).

(a) on the number of times that relevant Ministers have made statements under section 65AB; and

(ab) on the performance of functions and exercise of powers of the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and

S. 64A(1)(ab)
inserted by
No. 20/2017
s. 73(2)(a).

(b) if there have been 4 or more successful applications to the Supreme Court or the Tribunal by agencies against decisions of the Information Commissioner in a 12 month period.

S. 64A(1)(b)
amended by
No. 20/2017
s. 73(2)(b).

(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
(Heading)
amended by
No. 20/2017
s. 74(1).

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

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

S. 64B
inserted by
No. 6/2012
s. 30,
amended by
No. 20/2017
s. 74(2).

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

* * * * *

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

* * * * *

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

65AB Report to Parliament by Minister

- (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.

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—
- (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

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

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

S. 66(1)(b)
repealed by
No. 58/1993
s. 14, new
s. 66(1)(b)
inserted by
No. 6/2012
s. 33(2),
repealed by
No. 20/2017
s. 75.

* * * * *

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.

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

Division 5—Transitional and saving provisions

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.

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

- (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(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
- (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**.

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

(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 (as
amended by
No. 82/2012
s. 153(2)).

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

- (1) Despite the substitution of section 51 and the repeal of section 51A of this Act by sections 16 and 17 of the **Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012**, this Act as in force before the commencement of sections 16 and 17 continues to apply to—
- (a) an application for internal review that was received but not determined by the agency before that commencement; and
 - (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**.

70 Transitional provisions—Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014

S. 70
inserted by
No. 59/2014
s. 24.

- (1) If an application has been made for review under Division 1 of Part VI before the commencement day but the Freedom of Information Commissioner has not determined not to accept the application or completed the review before that day, the Freedom of Information Commissioner may, on or after that day, refer the application to an Assistant Commissioner under section 49EA(1)(a).
- (2) If a complaint has been made under Part VIA before the commencement day but the Freedom of Information Commissioner has not determined not to accept the complaint, dismissed the complaint or made recommendations in relation to the complaint before that day, the Freedom of Information Commissioner may, on or after that day, refer the complaint to an Assistant Commissioner under section 61AB(1)(a).

(3) Sections 49L and 49M as substituted by section 14 of the amending Act, and section 49MA as inserted by that section, apply in relation to an application for review under Division 1 of Part VI that is made on or after the commencement day and sections 49L and 49M as in force immediately before the commencement day continue to apply in relation to an application for review made before that day.

(4) In this section—

amending Act means the **Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014**;

commencement day means the day after the day on which the amending Act receives the Royal Assent.

S. 71
inserted by
No. 67/2014
s. 147(Sch. 2
item 18.3).

71 Transitional provision—Inquiries Act 2014

Section 15(2), as in force immediately before its repeal, continues to apply to records of a Royal Commission that were in the custody of the Public Record Office immediately before the commencement of item 18.2 of Schedule 2 to the **Inquiries Act 2014**.

S. 72
inserted by
No. 20/2017
s. 76.

72 Transitional provisions—Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017

Schedule 1 has effect.

**Schedule 1—Transitional provisions—
Freedom of Information Amendment
(Office of the Victorian Information
Commissioner) Act 2017**

Sch. 1
inserted by
No. 20/2017
s. 77.

1 Definitions

In this Schedule—

commencement day means the day on which
Part 2 of the **Freedom of Information
Amendment (Office of the Victorian
Information Commissioner) Act 2017**
comes into operation.

**2 Office of Freedom of Information Commissioner
abolished**

On the commencement day—

- (a) the office of the Freedom of Information Commissioner is abolished and the person holding that office and any person acting in that office go out of office; and
- (b) all rights, property and assets that, immediately before that day, were vested in the office of the Freedom of Information Commissioner are, by force of this clause, vested in the Office of the Victorian Information Commissioner; and
- (c) all debts, liabilities and obligations of the office of the Freedom of Information Commissioner existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the Office of the Victorian Information Commissioner; and

- (d) the Information Commissioner is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which the Freedom of Information Commissioner was a party immediately before that day; and
- (e) the Information Commissioner is, by force of this clause, substituted as a party to any arrangement or contract entered into by or on behalf of the Freedom of Information Commissioner as a party and in force immediately before that day.

3 References to Freedom of Information Commissioner and Assistant Commissioner

On the commencement day any reference to the Freedom of Information Commissioner or Assistant Commissioner in any Act (other than this Act) or in any rule, regulation, order, agreement, instrument, deed or other document (by whatever name called or however described) must, so far as it relates to any period on or after that day and if not inconsistent with the context or subject matter, be construed as a reference to the Information Commissioner.

4 Staff

On the commencement day, any staff employed under Part 3 of the **Public Administration Act 2004** immediately before the commencement day by the Freedom of Information Commissioner are taken to be employed by the Information Commissioner under section 6Q of this Act.

5 Requests under section 17

This Act as in force immediately before the commencement day continues to apply in relation to a request made under section 17 but not determined before the commencement day as if

any reference to the Freedom of Information Commissioner or the Assistant Commissioner were a reference to the Information Commissioner.

6 Requests under Part V

This Act as in force immediately before the commencement day continues to apply in relation to a request made under section 39 but not determined before the commencement day as if any reference to the Freedom of Information Commissioner or the Assistant Commissioner were a reference to the Information Commissioner.

7 Review by Freedom of Information Commissioner

This Act as in force immediately before the commencement day continues to apply in relation to an application for review made under Division 1 of Part VI but not determined before the commencement day as if any reference to the Freedom of Information Commissioner or the Assistant Commissioner were a reference to the Information Commissioner.

8 Review by Tribunal

Section 50(5) as in force before the commencement day continues to apply to a certificate issued under section 28(4) before the commencement day.

9 Complaints

This Act as in force immediately before the commencement day continues to apply in relation to any complaint that was made under Part VIA but in respect of which a determination had not been made under section 61B or 61C before the commencement day as if any reference to the Freedom of Information Commissioner or the

Assistant Commissioner were a reference to the Information Commissioner.

10 Accepted complaints

This Act as in force immediately before the commencement day continues to apply in relation to any complaint that was made under Part VIA and accepted under section 61B before the commencement day as if any reference to the Freedom of Information Commissioner or the Assistant Commissioner were a reference to the Information Commissioner.

11 Protections in relation to legal action

- (1) Section 62 and 63 as in force immediately before the commencement day—
 - (a) continue to apply in relation to the provision of access to a document before the commencement day; and
 - (b) apply in relation to the provision of access to a document on or after the commencement day under any other provision of this Act continued by this Schedule.
- (2) Section 63A as in force immediately before the commencement day—
 - (a) continues to apply in relation to anything done before the commencement day; and
 - (b) applies in relation to the performance on or after the commencement day of functions under Parts VI and VIA as continued by this Schedule as if for subsection (1)(a) to (c) there were substituted—
 - (a) the Information Commissioner;
 - (b) a member of staff of the Office of the Victorian Information Commissioner;

- (c) a contractor, agent or other person acting for or on behalf of the Information Commissioner.
- (3) Section 63B as in force immediately before the commencement day continues to apply in relation to anything done before the commencement day.

12 Production of documents

Division 2 of Part VII as in force immediately before the commencement day applies to any review conducted or any dealing with a complaint on or after the commencement day under any other provision of this Act that is continued by this Schedule as if—

- (a) any reference to the Freedom of Information Commissioner or the Assistant Commissioner were a reference to the Information Commissioner; and
- (b) any reference to a person referred to in section 6J were a reference to a person referred to in section 6Q.

13 Lodgement of complaints

A person cannot lodge a complaint under this Act as in force on and after the commencement day if the person had already lodged a complaint in respect of the same matter under this Act before the commencement day.

14 Annual reports for reporting periods which end before commencement day

- (1) This clause applies if—
 - (a) a reporting period has ended before the commencement day; and

(b) the Freedom of Information Commissioner has not prepared an annual report referred to in section 64 for that reporting period before that day.

- (2) The Information Commissioner must prepare an annual report for the reporting period in accordance with section 64.
- (3) The annual report may be prepared as a composite report with the report prepared under clause 12 of Schedule 3 to the **Privacy and Data Protection Act 2014**.
- (4) In this clause—

reporting period means the period commencing on 1 July in any year and ending on 30 June in the following year.

15 Annual reports for reporting periods which end on or after the commencement day

- (1) This clause applies if a reporting period ends on or after the commencement day.
- (2) On and after the commencement day, the Information Commissioner must prepare a report in accordance with section 64 for the part of the reporting period occurring before the commencement day and include that report in the Information Commissioner's first report under that section after the end of the reporting period.
- (3) In this clause—

reporting period means the period commencing on 1 July in any year and ending on 30 June in the following year.

16 Report to Accountability and Oversight Committee

- (1) This clause applies if the Freedom of Information Commissioner has not prepared a report referred to in section 64A before the commencement day.
 - (2) On and after the commencement day, the Information Commissioner must prepare the report in accordance with section 64A as in force before the commencement day.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

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- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication 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**

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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**

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**

Freedom of Information Act 1982
No. 9859 of 1982
Endnotes

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 (as amended by No. 82/2012)

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**

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**

Freedom of Information Act 1982
No. 9859 of 1982
Endnotes

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: S. 252 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 16) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Court Services Victoria Act 2014, No. 1/2014

Assent Date: 11.2.14
Commencement Date: Ss 66, 67 on 1.7.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 45) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 69) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Freedom of Information and Victorian Inspectorate Acts Amendment Act 2014, No. 59/2014

Assent Date: 2.9.14
Commencement Date: Ss 3–24 on 3.9.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 20) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 18) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Freedom of Information Act 1982
No. 9859 of 1982
Endnotes

Emergency Management Amendment (Critical Infrastructure Resilience) Act 2014, No. 76/2014

Assent Date: 21.10.14
Commencement Date: Ss 6, 7 on 1.7.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Sex Offenders Registration Amendment Act 2014, No. 82/2014

Assent Date: 21.10.14
Commencement Date: S. 29 on 1.6.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: Ss 171–176 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: Ss 4–77 on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Family Violence Protection Amendment (Information Sharing) Act 2017, No. 23/2017²

Assent Date: 14.6.17
Commencement Date: Ss 28–30 on 1.9.17: s. 2(3)–(5); ss 23–27 on 26.2.18: Special Gazette (No. 40) 6.2.18 p. 1
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Children Legislation Amendment (Information Sharing) Act 2018, No. 11/2018

Assent Date: 10.4.18
Commencement Date: Ss 33–37, 44, 45 on 27.9.18: Special Gazette (No. 405) 4.9.18 p. 1
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019, No. 2/2019

Assent Date: 5.3.19
Commencement Date: Ss 195, 198–201 on 6.3.19: s. 2(1)
Current State: This information relates only to the provision/s amending the **Freedom of Information Act 1982**

3 Amendments Not in Operation

This publication does not include amendments made to the **Freedom of Information Act 1982** by the following Act/s.

Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019, No. 2/2019

<i>Assent Date:</i>	5.3.19
<i>Commencement Date:</i>	Ss 108–110, 142–144 not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the Freedom of Information Act 1982

At the date of this publication the following provisions amending the **Freedom of Information Act 1982** were Not in Operation:

Amending Act/s:

Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019, No. 2/2019

108 Definitions

- (1) In section 5(1) of the **Freedom of Information Act 1982** insert the following definitions—

"assessable disclosure has the meaning given in section 3 of the **Public Interest Disclosures Act 2012**;

confidentiality notice means a notice issued by the Information Commissioner under section 61TJ(1);

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or

Note

A *registered relationship* is defined in subsection (5).

- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

public interest complaint has the meaning given in section 3 of the **Public Interest Disclosures Act 2012**;

restricted matter means—

- (a) any evidence or information given to, or obtained by, the Information Commissioner;
- (b) the contents of any document produced to, or obtained by, the Information Commissioner;
- (c) the existence of, or any information about, a confidentiality notice or a requirement under section 61U(1)(a) to attend an examination before the Information Commissioner;
- (d) the subject matter of an investigation by the Information Commissioner;
- (e) any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce, any document to the Information Commissioner, to be identified or located;
- (f) the fact that a person has been, or is proposed to be, examined by, or has produced, or may produce, any document to, the Information Commissioner;

- (g) the fact that a disclosure or related disclosure has been notified to an appropriate entity for assessment under Part 3 of the **Public Interest Disclosures Act 2012**;
- (h) the fact that a disclosure or related disclosure has been determined under Part 3 of the **Public Interest Disclosures Act 2012** to be a public interest complaint;
- (i) the fact that the Information Commissioner intends to conduct an investigation on a public interest disclosure;

spouse of a person means a person to whom the person is married;"

(2) After section 5(4) of the **Freedom of Information Act 1982** insert—

"(5) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case."

109 Freedom of information functions

In section 6I(1) of the **Freedom of Information Act 1982**—

- (a) in paragraph (e), for "Part VIB." substitute "Part VIB;"
- (b) after paragraph (e) **insert**—
 - "(f) investigate public interest complaints that relate to conduct relevant to the functions of the Information Commissioner."

110 New Division 3 of Part VIB inserted

After section 61T of the **Freedom of Information Act 1982** **insert**—

"Division 3—Investigations of public interest complaints

61TA Information Commissioner must investigate public interest complaints

- (1) Subject to sections 61TB and 61TC, the Information Commissioner must conduct an investigation under this Act on a public interest complaint referred to the Information Commissioner by the IBAC.
- (2) The Information Commissioner must not refer a public interest complaint referred to the Information Commissioner under subsection (1) to another person or body under section 61C for investigation by that person or body.

61TB Information Commissioner must refuse to investigate certain public interest complaints

- (1) The Information Commissioner must refuse to conduct an investigation on a public interest complaint if the investigation would prejudice any—
 - (a) criminal proceedings or criminal investigations; or
 - (b) investigations by the IBAC or the Victorian Inspectorate.
- (2) For the purposes of ensuring compliance with subsection (1), the Information Commissioner may consult any of the following—
 - (a) the Director of Public Prosecutions;
 - (b) the Chief Commissioner of Police;
 - (c) the IBAC;
 - (d) the Victorian Inspectorate.

61TC Information Commissioner may refuse to investigate certain public interest complaints

- (1) The Information Commissioner may refuse to conduct an investigation on a public interest complaint if the Information Commissioner considers the subject matter of the public interest complaint has already been investigated or otherwise dealt with by—
 - (a) an integrity body within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) any other person or body (whether or not still in existence) with the power to

require the production of documents or the answering of questions.

- (2) The Information Commissioner may refuse to conduct an investigation on a public interest complaint if the person who made the public interest complaint—
 - (a) made the disclosure that was determined to be a public interest complaint more than 12 months after becoming aware of the disclosed matter; and
 - (b) fails to give a satisfactory explanation for the delay in making the disclosure.
- (3) The Information Commissioner may refuse to conduct an investigation on a public interest complaint if the Information Commissioner considers that the conduct that is the subject of the complaint does not amount to improper conduct, within the meaning of section 3 of the **Public Interest Disclosures Act 2012**, or detrimental action against a person in contravention of section 45 of that Act.

61TD Notification of refusal to conduct investigation on public interest complaint

- (1) This section applies if the Information Commissioner refuses under section 61TB or 61TC to conduct an investigation on a public interest complaint.
- (2) Within a reasonable time after the public interest complaint is referred to the Information Commissioner by the IBAC, the Information Commissioner must inform the IBAC and the person who made the public interest disclosure of—

- (a) the refusal to conduct the investigation;
and
- (b) the reason for that refusal.

61TE Notification of corrupt conduct

If, at any time before, during or after an investigation of a public interest complaint, the Information Commissioner believes that the conduct that is the subject of the complaint appears to involve corrupt conduct, the Information Commissioner must—

- (a) notify the IBAC of that belief; and
- (b) if the investigation of the public interest complaint has not been completed—suspend the investigation pending a response from the IBAC to the notification.

61TF Procedure on completion of investigation of public interest complaint

- (1) On completion of an investigation of a public interest complaint, the Information Commissioner may, subject to subsection (3), make recommendations in accordance with section 61L.
- (2) However, the Information Commissioner must not refer a public interest complaint to another person or body under section 61L for investigation by that person or body.
- (3) The Information Commissioner must not include in a recommendation under section 61L any information that—
 - (a) is likely to lead to the identification of a person who has made an assessable disclosure; and

- (b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

61TG Person who made public interest disclosure to be informed of result of investigation

- (1) If the Information Commissioner conducts an investigation on a public interest complaint, the Information Commissioner must inform the person who made the complaint (unless the complaint was made anonymously) of—
- (a) the result of the investigation; and
 - (b) any other information that the Information Commissioner thinks proper.
- (2) The Information Commissioner must not disclose any information under this section if the Information Commissioner considers that the disclosure of the information would—
- (a) not be in the public interest or in the interests of justice; or
 - (b) put a person's safety at risk; or
 - (c) cause unreasonable damage to a person's reputation; or
 - (d) prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - (e) otherwise contravene any applicable statutory secrecy obligations or involve the unreasonable disclosure of information relating to the personal affairs of any person.

61TH Information Commissioner must not disclose certain information

If a public interest complaint is referred by the IBAC to the Information Commissioner for investigation, the Information Commissioner, the Public Access Commissioner or any officer of the Office of the Victorian Information Commissioner must not disclose any information that—

- (a) is likely to lead to the identification of a person who has made an assessable disclosure; and
- (b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

61TI Disclosure of information by Information Commissioner

- (1) At any time, the Information Commissioner may provide or disclose any information received or obtained in the course of an investigation of an assessable disclosure to a person or body specified in subsection (3) if the Information Commissioner considers that—
 - (a) the information is relevant to the performance of the duties and functions or the exercise of the powers of the person or body; and
 - (b) it is appropriate for the information to be brought to the attention of the person or body, having regard to the nature of the information.

- (2) Despite subsection (1), the Information Commissioner must not provide or disclose any information to a person or body if—
- (a) the person or body, or an employee of the person or body, is the subject of an assessable disclosure; and
 - (b) the information—
 - (i) would be likely to lead to the identification of a person who made the assessable disclosure; and
 - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (3) For the purposes of subsection (1), the following persons and bodies are specified—
- (a) the IBAC;
 - (b) the Victorian Inspectorate;
 - (c) the Ombudsman;
 - (d) the Auditor-General;
 - (e) Victoria Police;
 - (f) the Director of Public Prosecutions;
 - (g) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
 - (h) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;

- (i) the police force or police service (however described) of another State or a Territory;
 - (j) a prescribed person or body.
- (4) Subsection (1) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).

61TJ Confidentiality notice

- (1) If, during an investigation of a public interest complaint the Information Commissioner considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice—
- (a) an investigation by the IBAC or the Victorian Inspectorate; or
 - (b) the safety or reputation of a person; or
 - (c) the fair trial of a person who has been, or may be, charged with an offence—
- the Information Commissioner must issue a confidentiality notice in respect of the investigation to a person (other than an IBAC Officer or a Victorian Inspectorate Officer) specifying the restricted matter or restricted matters in accordance with this section.
- (2) A confidentiality notice must—
- (a) be in the prescribed form; and
 - (b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued; and

- (c) include a copy of the provisions of subsections (3) to (7) and sections 61TK and 61TM and an explanation of the effect of those provisions; and
 - (d) include a statement—
 - (i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Public Interest Disclosures Act 2012** relating to confidentiality may apply to the person; and
 - (ii) directing the person to the provisions of that Act which impose those obligations.
- (3) If at any time the Information Commissioner considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the disclosure would not be likely to have the effect specified in subsection (1)(a), (b) or (c), the Information Commissioner must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).

- (4) If at any time the Information Commissioner considers on reasonable grounds that disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in subsection (1)(a), (b) or (c), the Information Commissioner must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (5) If at any time the Information Commissioner considers on reasonable grounds that disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in subsection (1)(a), (b) or (c), the Information Commissioner must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice.
- (6) At the conclusion of an investigation in respect of which a confidentiality notice was issued, the Information Commissioner must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless—

- (a) the Information Commissioner has applied for an order under section 61TK extending the confidentiality notice and the application has not been determined; or
 - (b) the Supreme Court has made an order under section 61TK extending the confidentiality notice; or
 - (c) the confidentiality notice has already been cancelled under subsection (3), (4) or (5) or section 61TK(3).
- (7) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—
- (a) the date on which the Information Commissioner issues a notice cancelling the confidentiality notice under subsection (3), (4), (5) or (6) or section 61TK(3);
 - (b) the date specified in an order under section 61TK extending the confidentiality notice.
- (8) A confidentiality notice under subsection (1) or a notice cancelling a confidentiality notice under subsection (3), (4), (5) or (6) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served.

61TK Extension of confidentiality notice

- (1) If, before the conclusion of an investigation in respect of which a confidentiality notice has been issued, the Information Commissioner considers on reasonable grounds that it is necessary to extend the confidentiality notice for a period following the investigation, the Information

Commissioner may apply to the Supreme Court for an order extending the confidentiality notice.

- (2) On an application under subsection (1), the Supreme Court may, by order, extend a confidentiality notice to a date specified in the order, if the Supreme Court is satisfied that disclosure of the restricted matter or restricted matters specified in the confidentiality notice before that date would be likely to have the effect specified in section 61TJ(1)(a), (b) or (c).
- (3) If, on an application under subsection (1), the Supreme Court declines to make an order under subsection (2), the Information Commissioner must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless the investigation in respect of which the confidentiality notice was issued has not concluded.

Note

Section 61TJ(6) provides for the issue of a notice cancelling a confidentiality notice at the conclusion of the investigation to which the confidentiality notice relates.

- (4) A notice cancelling a confidentiality notice under subsection (3) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served.

61TL Information Commissioner to provide the IBAC with copies

The Information Commissioner, as soon as reasonably practicable, must provide the IBAC with a copy of—

- (a) each confidentiality notice issued by the Information Commissioner;
- (b) each notice cancelling a confidentiality notice issued by the Information Commissioner under section 61TJ(3), (4), (5) or (6) or section 61TK(3);
- (c) each application to the Supreme Court under section 61TK(1) to extend a confidentiality notice;
- (d) each order of the Supreme Court under section 61TK(2) extending a confidentiality notice.

61TM Disclosure subject to confidentiality notice

- (1) Except as provided in this section, a person who—
 - (a) is duly served with a confidentiality notice and, if applicable, a copy of any order extending the confidentiality notice; or
 - (b) receives a copy of a confidentiality notice under subsection (8) or (9) and, if applicable, a copy of any order extending the confidentiality notice—

must not disclose a restricted matter specified in the confidentiality notice while it has effect.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—

- (a) in accordance with a direction or authorisation given by the Information Commissioner;
- (b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice, including—
 - (i) to an interpreter—if the person does not have a sufficient knowledge of the English language to understand the nature of the witness summons or confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice;
 - (ii) to a parent, guardian or independent person—if the person is under the age of 18 years;
 - (iii) to an independent person—if the person is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice without assistance;

- (c) for the purposes of obtaining legal advice or representation in relation to—
 - (i) an investigation conducted by the Information Commissioner under this Act; or
 - (ii) the person's rights, liabilities, obligations and privileges under this Act or a relevant Act;
- (d) by a legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from their professional relationship with their client;
- (e) to any of the following persons, unless the Information Commissioner directs that the restricted matter must not be disclosed to that person—
 - (i) the spouse or domestic partner of the person served with the confidentiality notice;
 - (ii) the employer or manager of the person served with the confidentiality notice, or both;
- (f) in any of the following circumstances, unless the Information Commissioner directs that the restricted matter must not be disclosed in that circumstance—
 - (i) to any of the following for the purpose of assisting the person to seek advice or support in relation to the investigation in respect of which the confidentiality notice has been issued—

- (A) a registered health practitioner;
 - (B) a trade union, within the meaning of the Workplace Relations Act 1996 of the Commonwealth, of which the person is a member;
 - (C) an employee assistance program;
 - (ii) to the Victorian WorkCover Authority for the purpose of a workers' compensation claim;
 - (iii) to a prescribed service for a purpose prescribed for that service;
 - (iv) for the purpose of an application to the Fair Work Commission, including any related proceeding;
 - (g) as is otherwise authorised or required to be made by or under this Act.
- (3) A restricted matter specified in a confidentiality notice may be disclosed to the IBAC if—
- (a) the IBAC referred the complaint to which restricted matter relates to the Information Commissioner under section 73A of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (b) the IBAC has withdrawn the referral in accordance with section 79 of that Act.
- (4) A restricted matter specified in a confidentiality notice may be disclosed to Victoria Police if—

- (a) the Information Commissioner has disclosed information to the Chief Commissioner of Police under section 61TI relating to actual or potential criminal conduct; and
 - (b) the restricted matter is relevant to an investigation by Victoria Police of the actual or potential criminal conduct.
- (5) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making—
 - (a) a complaint to the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) a complaint to the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (6) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of complying with—
 - (a) a witness summons served on a person by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (7) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been published by an investigating entity or the Integrity and Oversight Committee in a report or has otherwise been made public in accordance with this or any other Act.

- (8) A person who makes a disclosure of information permitted by subsection (2) must, when making the disclosure, provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (9) If in respect of a particular investigation a person who makes a disclosure of information permitted by subsection (2) receives a new confidentiality notice, a notice cancelling the confidentiality notice or an order extending the confidentiality notice, the person must as soon as reasonably practicable provide a copy of the new confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice to each person to whom the disclosure has been made, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (10) Proceedings may only be instituted for an offence under subsection (1), (8) or (9)—
- (a) by the Information Commissioner; or
 - (b) by or with the consent of the Director of Public Prosecutions.

- (11) In this section—

Fair Work Commission means the body established under section 575 of the Fair Work Act 2009 of the Commonwealth;

investigating entity has the same meaning as in section 3 of the **Public Interest Disclosures Act 2012**;

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student);

relevant Act means—

- (a) the **Public Interest Disclosures Act 2012**; or
- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (d) the **Ombudsman Act 1973**; or
- (e) the Fair Work Act 2009 of the Commonwealth;

Victorian WorkCover Authority has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**."

142 Tabling of report in Parliament

After section 61T(4) of the **Freedom of Information Act 1982** insert—

- "(5) If the Information Commissioner proposes to transmit a report to the Parliament under this section, the Information Commissioner must give an advance copy of the report to—
- (a) the Minister; and
 - (b) the Secretary to the Department of Premier and Cabinet.

- (6) The copy of the report must be given at least one business day before—
 - (a) if subsection (3) applies—the report is given to the clerk of each House of the Parliament; or
 - (b) otherwise—the report is due to be transmitted to the Parliament.
- (7) The Information Commissioner is not required to give an advance copy of the report under subsection (5) if the Information Commissioner considers that in all the circumstances it would be inappropriate to do so."

143 Reporting by Information Commissioner

After section 64(5) of the **Freedom of Information Act 1982** insert—

- "(6) At least one business day before the Information Commissioner transmits the annual report to the Parliament under subsection (5), the Information Commissioner must give an advance copy of the annual report to—
 - (a) the Minister; and
 - (b) the Secretary to the Department of Premier and Cabinet."

144 New section 61ZH inserted

After section 61ZG of the **Freedom of Information Act 1982** insert—

"61ZH Audio or video recording of examination

- (1) This section applies if a person is required under this Part to attend an examination before the Information Commissioner.

- (2) The Information Commissioner must ensure that an audio or video recording of the examination is made.
- (3) Subject to subsection (4), evidence of anything said by the person during the examination is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
 - (a) an audio or video recording of the examination is made; and
 - (b) the audio or video recording is available to be tendered in evidence.
- (4) A court may admit evidence of anything said by the person during the examination that is otherwise inadmissible because of subsection (3) if the court is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- (5) Unless the Information Commissioner considers on reasonable grounds that doing so may prejudice an investigation under this Act, the Information Commissioner must provide the person attending the examination with a copy of—
 - (a) the audio or video recording; and
 - (b) any transcript created.
- (6) If the Information Commissioner determines not to provide the person with a copy of the audio or video recording and any transcript in accordance with subsection (5), the Information Commissioner must allow the person to listen to or view the recording of the person's evidence at the premises of the Information Commissioner at any reasonable time.

- (7) As soon as possible after the examination, the Information Commissioner must provide the Victorian Inspectorate with a copy of the audio or video recording and any transcript of the examination."

4 Explanatory details

¹ S. 51(2): The amendment proposed by section 43(3)(b) of the **Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017**, No. 20/2017 is not included in this publication as the words "office of the Freedom of Information Commissioner" do not appear in section 51.

Section 43(3)(b) reads as follows:

43 Information Commissioner may be called on to assist Tribunal

(3) In section 51 of the Principal Act—

(b) for "office of the Freedom of Information Commissioner" **substitute** "Office of the Victorian Information Commissioner".

² Table of Amendments (**Family Violence Protection Amendment (Information Sharing) Act 2017**): The amendment proposed by section 30 of the **Family Violence Protection Amendment (Information Sharing) Act 2017**, No. 23/2017 is not included in this publication because section 49P(3A) was not part of this Act when section 30 of the amending Act came into operation.

Section 30 reads as follows:

30 Decision on review

In section 49P(3A) of the **Freedom of Information Act 1982**, for "Freedom of Information Commissioner" **substitute** "Information Commissioner".