# Freedom of Information Amendment (Reform) Act 2010

# No. 51, 2010

## An Act to amend the law relating to access to information, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

# Contents


1 Short title ..... 1
2 Commencement ..... 2
3 Schedule(s) ..... 3

**Schedule 1—Objects** 4

*Freedom of Information Act 1982* 4

**Schedule 2—Publication of information** 6

*Freedom of Information Act 1982* 6

**Schedule 3—Exemptions** 14

Part 1—Open access period amendments 14

*Archives Act 1983* 14

Part 2—Main exemption amendments 17

*Freedom of Information Act 1982* 17

Part 3—Other exemption amendments 43

*Archives Act 1983* 43

*Privacy Act 1988* 44

Part 4—Application provisions 45

**Schedule 4—Information Commissioner amendments** 46

Part 1—Main amendments 46

*Freedom of Information Act 1982* 46

Part 2—Other amendments 121

*Ombudsman Act 1976* 121

Part 3—Application and transitional provisions 123

**Schedule 5—Amendments consequential on the establishment of the Office of the Australian Information Commissioner** 125

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006* 125

*Australian Citizenship Act 2007* 125

*Australian Human Rights Commission Act 1986* 125

*Aviation Legislation Amendment (2008 Measures No. 2) Act 2009* 126

*Child Care Act 1972* 126
*Crimes Act 1914* 126
*Data-matching Program (Assistance and Tax) Act 1990* 128
*Environment Protection and Biodiversity Conservation Act 1999* 129
*Fair Work Act 2009* 130
*Fisheries Management Act 1991* 130
*Migration Act 1958* 130
*National Health Act 1953* 130
*National Health and Medical Research Council Act 1992* 131
*Privacy Act 1988* 132
*Telecommunications Act 1997* 132
*Telecommunications (Interception and Access) Act 1979* 134
*Torres Strait Fisheries Act 1984* 134

**Schedule 6—Other amendments** 135

Part 1—Amendments to the Freedom of Information Act 1982 135
*Freedom of Information Act 1982* 135

Part 2—Application provisions 150

Part 3—Amendment of other Acts 151
*Administrative Appeals Tribunal Act 1975* 151
*Australian Crime Commission Act 2002* 151
*Environment Protection and Biodiversity Conservation Act 1999* 151
*Inspector-General of Intelligence and Security Act 1986* 153

**Schedule 7—Privacy Commissioner transition** 154

Part 1—Preliminary 154

Part 2—Office holders, staff and consultants 155

Part 3—Things done by, or in relation to, the Privacy Commissioner 158

Part 4—Investigations 161

Part 5—Written instruments and reporting requirements 163

Part 6—Legal and other proceedings 165

Part 7—Miscellaneous 167

# Freedom of Information Amendment (Reform) Act 2010

**No. 51, 2010**

## An Act to amend the law relating to access to information, and for related purposes

[*Assented to 31 May 2010*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Freedom of Information Amendment (Reform) Act 2010*.

## 2 Commencement

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

| **Commencement information** | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 31 May 2010 |
| 2. Schedule 1 | Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.<br>However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |
| 3. Schedule 2 | The day after the end of the period of 6 months beginning on the day section 3 of the *Australian Information Commissioner Act 2010* commences.<br>However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |
| 4. Schedule 3, items 1 to 14 | Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.<br>However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |
| 5. Schedule 3, item 15 | The day after the end of the period of 6 months beginning on the day section 3 of the *Australian Information Commissioner Act 2010* commences. | |

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| | However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |
| 6. Schedule 3, items 16 to 40 | Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.<br>However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |
| 7. Schedules 4 to 7 | Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.<br>However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all. | |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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

## 3 Schedule(s)

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

# Schedule 1—Objects

## *Freedom of Information Act 1982*

### 1 Section 3

Repeal the section, substitute:

### 3 Objects—general

(1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:

(a) requiring agencies to publish the information; and

(b) providing for a right of access to documents.

(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:

(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;

(b) increasing scrutiny, discussion, comment and review of the Government's activities.

(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.

(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 3A Objects—information or documents otherwise accessible

*Scope*

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

*Publication and access powers not limited*

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

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

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

## 2 Section 14

Repeal the section.

# Schedule 2—Publication of information

## *Freedom of Information Act 1982*

### 1 Subsection 4(1)

Insert:

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

### 2 Subsection 4(9)

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

### 3 Part II

Repeal the Part, substitute:

# Part II—Information publication scheme

## Division 1—Guide to this Part

### 7A Information publication scheme—guide

This Part establishes an information publication scheme for agencies.

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

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

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

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

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

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

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

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

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

## Division 2—Information to be published

### 8 Information to be published—what information?

*Agency plans*

(1) An agency must prepare a plan showing the following:
  (a) what information the agency proposes to publish for the purposes of this Part;
  (b) how, and to whom, the agency proposes to publish information for the purposes of this Part;
  (c) how the agency otherwise proposes to comply with this Part.

*Information that must be published*

(2) The agency must publish the following information:
  (a) the plan prepared under subsection (1);
  (b) details of the structure of the agency's organisation (for example, in the form of an organisation chart);

(c) as far as practicable, details of the functions of the agency, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities);

(d) details of appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the *Public Service Act 1999*);

(e) the information in annual reports prepared by the agency that are laid before the Parliament;

(f) details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made;

(g) information in documents to which the agency routinely gives access in response to requests under Part III (access to documents), except information of the following kinds:

(i) personal information about any individual, if it would be unreasonable to publish the information;

(ii) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;

(iii) other information of a kind determined by the Information Commissioner under subsection (3), if it would be unreasonable to publish the information;

(h) information held by the agency that is routinely provided to the Parliament in response to requests and orders from the Parliament;

(i) contact details for an officer (or officers) who can be contacted about access to the agency's information or documents under this Act;

(j) the agency's operational information (see section 8A).

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

(3) The Information Commissioner may, by legislative instrument, make a determination for the purposes of subparagraph (2)(g)(iii).

*Other information*

(4) The agency may publish other information held by the agency.

*Functions and powers*

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

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

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

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

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

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

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

## 8B Information to be published—accuracy etc.

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

## 8C Information to be published—restrictions

*Exempt documents*

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

*Publication prohibited or restricted by other legislation*

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

*Operation of restrictions*

(3) This section applies despite section 8.

## 8D Information to be published—how (and to whom) information is to be published

*Scope*

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

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

(2) The agency must publish the information:
   (a) to members of the public generally; and
   (b) if the agency considers that it is appropriate to do so—to particular classes of persons or entities.

(3) The agency must publish the information on a website by:
   (a) making the information available for downloading from the website; or
   (b) publishing on the website a link to another website, from which the information can be downloaded; or
   (c) publishing on the website other details of how the information may be obtained.

*Charges*

(4) The agency may impose a charge on a person for accessing the information only if:
   (a) the person does not directly access the information by downloading it from the website (or another website); and
   (b) the charge is to reimburse the agency for specific reproduction costs, or other specific incidental costs, incurred in giving the person access to that particular information.

(5) If there is a charge for accessing the information, the agency must publish details of the charge in the same way as the information is published under this section.

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

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

### 8E Information to be published—Information Commissioner to assist agencies

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

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

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

## Division 3—Review of information publication scheme

### 8F Review of scheme—Information Commissioner functions

The Information Commissioner has the following functions (as conferred by this Act and the *Australian Information Commissioner Act 2010*, but without limiting any provision of either Act):

(a) reviewing the operation in each agency of the information publication scheme established by this Part, in conjunction with the agency;

(b) investigating an agency's compliance with this Part under Division 2 of Part VIIB (Information Commissioner investigations);

(c) otherwise monitoring, investigating and reporting on the operation of the scheme.

### 9 Review of scheme—by agencies

(1) An agency must, in conjunction with the Information Commissioner, complete a review of the operation, in the agency, of the information publication scheme established by this Part:

(a) as appropriate from time to time; and

(b) in any case—within 5 years after the last time a review under this section was completed.

(2) The first review under subsection (1) must be completed within 5 years after the day this section commences.

Note 1: This section commences on the day after the end of the period of 6 months beginning on the day on which the *Australian Information Commissioner Act 2010* commences.

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

## Division 4—Guidelines

### 9A Functions and powers under this Part

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

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

(b) guidelines issued by the Information Commissioner for the purposes of this paragraph under section 93A.

## Division 5—Miscellaneous

### 10 Unpublished operational information

*Scope*

(1) This section applies if:

(a) part (or all) of an agency's operational information (the ***unpublished information***), in relation to a function or power of the agency, is not published by the agency in accordance with this Part; and

(b) a person engages in conduct relevant to the performance of the function or the exercise of the power; and

(c) at the time of engaging in that conduct:

(i) the person was not aware of the unpublished information; and

(ii) the agency had been in existence for more than 12 months.

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

*No prejudice from lack of awareness of unpublished information*

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

### 10A Who performs functions etc. given to agencies

(1) A function or power given to an agency under this Part may be performed or exercised, on behalf of the agency, by:

(a) the principal officer of the agency; or

(b) an officer of the agency acting within the scope of his or her authority in accordance with arrangements approved by the principal officer of the agency.

(2) The performance or exercise of a function or power under paragraph (1)(b) is subject to the regulations.

## 4 Saving—unpublished information

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

(a) a document relating to a function of an agency, required to be made available in accordance with section 9 of that Act before the commencement time; and

(b) conduct engaged in by a person before the commencement time that is relevant to the performance of that function.

Note: Item 3 commences on the day after the end of the period of 6 months beginning on the day on which the *Australian Information Commissioner Act 2010* commences.

# Schedule 3—Exemptions

## Part 1—Open access period amendments

### *Archives Act 1983*

#### 1 Subsection 3(1)

Insert:

> ***open access period***, in relation to a record, has the meaning given by the following provisions:
> (a) for a Cabinet notebook—section 22A;
> (b) for a record containing Census information—section 22B;
> (c) for any other record—subsection (7) of this section.

#### 2 Subsection 3(7)

Repeal the subsection (including the note), substitute:

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

**Open access period for records**

| Item | If the record came into existence in any of the following years (ending on 31 December): | the record is in the open access period on and after the following day: |
|---|---|---|
| 1 | a year (the ***creation year***) before 1980 | 1 January in the year that is 31 years after the creation year.<br>Example: A record that came into existence in the year 1979 is in the open access period on and after 1 January 2010. |
| 2 | 1980 or 1981 | 1 January 2011. |
| 3 | 1982 or 1983 | 1 January 2012. |
| 4 | 1984 or 1985 | 1 January 2013. |
| 5 | 1986 or 1987 | 1 January 2014. |
| 6 | 1988 or 1989 | 1 January 2015. |

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

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

## 3 Subsection 22A(1)

Repeal the subsection, substitute:

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

| Open access period for Cabinet notebooks | | |
|---|---|---|
| **Item** | **If the Cabinet notebook came into existence in any of the following years (ending on 31 December):** | **the Cabinet notebook is in the open access period on and after the following day:** |
| 1 | a year (the ***creation year***) before 1960 | 1 January in the year that is 51 years after the creation year.<br>Example: A Cabinet notebook that came into existence in the year 1959 is in the open access period on and after 1 January 2010. |
| 2 | 1960, 1961 or 1962 | 1 January 2011. |
| 3 | 1963, 1964 or 1965 | 1 January 2012. |
| 4 | 1966, 1967 or 1968 | 1 January 2013. |

| Open access period for Cabinet notebooks | | |
|---|---|---|
| **Item** | **If the Cabinet notebook came into existence in any of the following years (ending on 31 December):** | **the Cabinet notebook is in the open access period on and after the following day:** |
| 5 | 1969, 1970 or 1971 | 1 January 2014. |
| 6 | 1972, 1973 or 1974 | 1 January 2015. |
| 7 | 1975, 1976 or 1977 | 1 January 2016. |
| 8 | 1978, 1979 or 1980 | 1 January 2017. |
| 9 | 1981, 1982 or 1983 | 1 January 2018. |
| 10 | 1984, 1985 or 1986 | 1 January 2019. |
| 11 | 1987, 1988 or 1989 | 1 January 2020. |
| 12 | 1990 | 1 January 2021. |
| 13 | a year (the ***creation year***) after 1990 | 1 January in the year that is 31 years after the creation year.<br>Example: A Cabinet notebook that came into existence in the year 1991 is in the open access period on and after 1 January 2022. |

Note: Records that are not Cabinet notebooks have different open access periods (see subsection 3(7) (general records) and section 22B (records containing Census information)).

## 4 Paragraph 26(1)(a)

Omit “25 years”, substitute “15 years”.

## 5 Paragraph 27(3)(b)

Omit “25 years”, substitute “15 years”.

## 6 Subsection 30(2)

Omit “25 years”, substitute “15 years”.

# Part 2—Main exemption amendments

## *Freedom of Information Act 1982*

### 7 Subsection 4(1)

Insert:

***Cabinet*** includes a committee of the Cabinet.

### 8 Subsection 4(1) (definition of *Cabinet notebook*)

Omit "or of a committee of the Cabinet, being notes", substitute ", if the notes were".

### 9 Subsection 4(1)

Insert:

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

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

### 10 Subsection 4(1) (definition of *edited copy*)

Repeal the definition, substitute:

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

### 11 Subsection 4(1) (paragraph (a) of the definition of *exempt document*)

Repeal the paragraph, substitute:

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

### 12 Subsection 4(1)

Insert:

***run out***: all of a person's opportunities for review or appeal in relation to an access grant decision have ***run out*** when:

(a) the latest time for applying for an internal review or an IC review in relation to the decision has ended, if the person has not applied for either review; or

(b) if the person has applied for an internal review in relation to the decision:

(i) the internal review is concluded; and

(ii) the time for applying for an IC review of the decision on internal review has ended, if the person has not applied for the IC review; or

(c) if the person has applied for an IC review in relation to the decision:

(i) proceedings in relation to the IC review are concluded; and

(ii) the time for applying to the Tribunal for a review in relation to the decision has ended, if the person has not applied for such a review; and

(iii) the time for instituting an appeal to the Federal Court in relation to the IC review has ended (with no appeal instituted), or, if an appeal has been instituted, all proceedings in relation to the appeal have been concluded; or

(d) if the person has applied to the Tribunal for a review in relation to the decision:

(i) proceedings in relation to the review are concluded; and

(ii) the time for instituting an appeal to the Federal Court in relation to the review by the Tribunal has ended (with no appeal instituted), or, if an appeal has been instituted, all proceedings in relation to the appeal have been concluded.

Note: The time for applying for a review of a decision may be extended in certain circumstances (see sections 54B and 54T).

## 13 At the end of section 4

Add:

(10) To avoid doubt, information or matter communicated in the way mentioned in paragraph 33(b) includes information or matter so communicated pursuant to any treaty or formal instrument on the

reciprocal protection of classified information between the Government of the Commonwealth, or an authority of the Commonwealth, and:

(a) a foreign government or an authority of a foreign government; or

(b) an international organisation.

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

## 14 After section 11

Insert:

### 11A Access to documents on request

*Scope*

(1) This section applies if:

(a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:

(i) a document of the agency; or

(ii) an official document of the Minister; and

(b) any charge that, under the regulations, is required to be paid before access is given has been paid.

(2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

(a) section 12 (documents otherwise available);

(b) section 13 (documents in national institutions);

(c) section 15A (personnel records);

(d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

*Mandatory access—general rule*

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

*Exemptions and conditional exemptions*

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

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

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

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

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

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

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

(a) a conditionally exempt document; and

(b) an exempt document:

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

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

## 11B Public interest exemptions—factors

*Scope*

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

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

*Factors favouring access*

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

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

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

(c) promote effective oversight of public expenditure;

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

*Irrelevant factors*

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

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

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

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

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

*Guidelines*

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

## 15 Before section 12

Insert:

## 11C Publication of information in accessed documents

*Scope*

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

(a) personal information about any person, if it would be unreasonable to publish the information;

(b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;

(c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;

(d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).

(2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

*Publication*

(3) The agency, or the Minister, must publish the information to members of the public generally on a website by:

(a) making the information available for downloading from the website; or

(b) publishing on the website a link to another website, from which the information can be downloaded; or

(c) publishing on the website other details of how the information may be obtained.

(4) The agency may impose a charge on a person for accessing the information only if:

(a) the person does not directly access the information by downloading it from the website (or another website); and

(b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.

(5) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

*Time limit for publication*

(6) The agency or Minister must comply with this section within 10 working days after the day the person is given access to the document.

(7) In this section:

***working day*** means a day that is not:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday in the place where the function of publishing the information under this section is to be performed.

## 16 Section 18

Repeal the section.

## 17 Section 22

Repeal the section, substitute:

### 22 Access to edited copies with exempt or irrelevant matter deleted

*Scope*

(1) This section applies if:

(a) an agency or Minister decides:

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

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

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

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

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

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

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

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

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

*Access to edited copy*

(2) The agency or Minister must:

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

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

*Notice to applicant*

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

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

(b) of the grounds for the deletions; and

(c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.

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

## 18 Subsections 25(1) and (2)

Omit “or 33A” (wherever occurring).

## 19 At the end of paragraph 26(1)(a)

Add “and”.

## 20 After paragraph 26(1)(a)

Insert:

(aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

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

## 21 Sections 26A, 27, 27A and 28

Repeal the sections, substitute:

### 26A Consultation—documents affecting Commonwealth-State relations

*Scope*

(1) This section applies if:

(a) arrangements have been entered into between the Commonwealth and a State about consultation under this section; and

(b) a request is made to an agency or Minister for access to a document that:

(i) originated with, or was received from, the State or an authority of the State; or

(ii) contains information (***State-originated information***) that originated with, or was received from, the State or an authority of the State; and

(c) it appears to the agency or Minister that the State may reasonably wish to contend that:

(i) the document is conditionally exempt under section 47B (Commonwealth-State relations); and

(ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

*Consultation required*

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

*Decision to give access*

(3) If, after such consultation has taken place, the agency or Minister decides to give the applicant access to the document, the agency or Minister must give written notice of the decision to both of the following:

(a) the State;

(b) the applicant.

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

(4) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the State for review or appeal in relation to the decision to give access to the document have run out, the decision still stands, or is confirmed.

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

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).

*Edited copies and State-originated information*

(5) This section applies:

(a) in relation to an edited copy of a document—in the same way as it applies to the document; and

(b) in relation to a document containing State-originated information—to the extent to which the document contains such information.

## 27 Consultation—business documents

*Scope*

(1) This section applies if:

(a) a request is made to an agency or Minister for access to a document containing information (***business information***) covered by subsection (2) in respect of a person, organisation or undertaking; and

(b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the ***person or organisation concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:

(i) the document is exempt under section 47 (trade secrets etc.); or

(ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

(2) This subsection covers the following information:

(a) in relation to a person—information about the person's business or professional affairs;

(b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.

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

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

(b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;

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

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

*Opportunity to make submissions*

(4) The agency or Minister must not decide to give access to the document unless:

(a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and

(b) the agency or the Minister has regard to any submissions so made.

(5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Notice of decision to give access*

(6) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:

(a) the person or organisation concerned;

(b) the applicant.

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

(7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

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

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

(8) Subsections (6) and (7) do not apply unless the person or organisation concerned makes a submission in support of the exemption contention as allowed under paragraph (4)(a).

*Edited copies and business information*

(9) This section applies:
  (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
  (b) in relation to a document containing business information—to the extent to which the document contains such information.

## 27A Consultation—documents affecting personal privacy

*Scope*

(1) This section applies if:
  (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and
  (b) it appears to the agency or Minister that the person or the person's legal personal representative (the ***person concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:
    (i) the document is conditionally exempt under section 47F; and
    (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

(2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:
  (a) the extent to which the information is well known;

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

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

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

*Opportunity to make submissions*

(3) The agency or Minister must not decide to give the applicant access to the document unless:

(a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and

(b) the agency or the Minister has regard to any submissions so made.

(4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

*Decision to give access*

(5) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:

(a) the person concerned;

(b) the applicant.

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

(6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

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

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have ***run out***, see subsection 4(1).

*Notice and stay of decision not to apply unless submission made in support of exemption contention*

(7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a).

*Edited copies and personal information*

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

## 22 Before section 32

Insert:

# Division 1—Preliminary

### 31A Access to exempt and conditionally exempt documents

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

**How this Act applies to exempt and conditionally exempt documents**

| Item | If … | then … | because of … |
|---|---|---|---|
| 1 | a document is an exempt document under Division 2 (exemptions) or under paragraph (b) or (c) of the definition of ***exempt document*** in | access to the document is not required to be given | subsection 11A(4). |

| How this Act applies to exempt and conditionally exempt documents | | | |
|---|---|---|---|
| **Item** | **If …** | **then …** | **because of …** |
| | subsection 4(1) | | |
| 2 | a document is a conditionally exempt document under Division 3 (public interest conditional exemptions) | access to the document is required to be given, unless it would be contrary to the public interest | subsection 11A(5) (see also section 11B (public interest factors)). |
| 3 | a document is an exempt document as mentioned in item 1, and also a conditionally exempt document under Division 3 | access to the document is not required to be given | subsections 11A(4) and (6), and section 32 (interpretation). |
| 4 | access to a document is refused because it contains exempt matter, and the exempt matter can be deleted | (a) an edited copy deleting the exempt matter must be prepared (if practicable); and<br>(b) access to the edited copy must be given; | section 22. |
| 5 | a document is an exempt document because of any provision of this Act | access to the document may be given apart from under this Act | section 3A (objects—information or documents otherwise accessible). |

## 31B Exempt documents for the purposes of this Part

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

(a) it is an exempt document under Division 2; or

(b) it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

(a) it is exempt under this section; or

(b) it is exempt because of section 7 (exemption of certain persons and bodies); or

(c) it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

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

## 23 Section 32

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

## 24 After section 32

Insert:

# Division 2—Exemptions

## 25 At the end of section 33

Add:

Note: See also subsection 4(10).

## 26 Sections 33A to 36

Repeal the sections, substitute:

### 34 Cabinet documents

*General rules*

(1) A document is an exempt document if:
  (a) both of the following are satisfied:
    (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
    (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
  (b) it is an official record of the Cabinet; or
  (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
  (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

*Exceptions*

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

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

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

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

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

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

## 27 Sections 39, 40 and 41

Repeal the sections.

## 28 Subsection 42(2)

Repeal the subsection, substitute:

(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

(a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and

(b) the information is operational information of an agency.

Note: For ***operational information***, see section 8A.

## 29 Sections 43, 43A and 44

Repeal the sections.

## 30 Subsection 45(2)

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

## 31 Subsection 45(2)

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

## 32 Section 47

Repeal the section, substitute:

### 47 Documents disclosing trade secrets or commercially valuable information

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

(2) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth or a State or by a local government authority.

## 33 At the end of Part IV

Add:

# Division 3—Public interest conditional exemptions

### 47B Public interest conditional exemptions—Commonwealth-State relations

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

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

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

### 47C Public interest conditional exemptions—deliberative processes

*General rule*

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth.

*Exceptions*

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

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

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

### 47D Public interest conditional exemptions—financial or property interests of the Commonwealth

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

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

### 47E Public interest conditional exemptions—certain operations of agencies

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

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

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

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

## 47F Public interest conditional exemptions—personal privacy

*General rule*

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

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

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

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

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

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

(3) Subject to subsection (5), subsection (1) does 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.

*Access given to qualified person instead*

(4) Subsection (5) applies 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 information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of ***qualified person*** in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

***qualified person*** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist;

(d) a counsellor;

(e) a social worker.

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

## 47G Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth or a State or by a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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

## 47H Public interest conditional exemptions—research

A document is conditionally exempt if:

(a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency specified in Schedule 4; and

(b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

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

## 47J Public interest conditional exemptions—the economy

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

(a) influencing a decision or action of a person or entity; or

(b) giving a person (or class of persons) an undue benefit or detriment, in relation to business carried on by the person (or class), by providing premature knowledge of proposed or possible action or inaction of a person or entity.

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

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

(a) a particular sector of the economy; or

(b) the economy of a particular region of Australia.

(3) The documents to which subsection (1) applies include, but are not limited to, documents containing matter relating to any of the following:

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, including duties of customs or of excise;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) proposals for expenditure;

(f) foreign investment in Australia;

(g) borrowings by the Commonwealth, a State or an authority of the Commonwealth or of a State.

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

## 34 Schedule 4

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

# Part 3—Other exemption amendments

## *Archives Act 1983*

### 35 Paragraph 33(1)(b)

Repeal the paragraph, substitute:

(b) information or matter:

(i) that was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the ***foreign entity***) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the ***Commonwealth entity***); and

(ii) which the foreign entity advises the Commonwealth entity is still confidential; and

(iii) the confidentiality of which it would be reasonable to maintain;

### 36 Paragraph 50A(2)(b)

Repeal the paragraph, substitute:

(b) whether it would be reasonable to maintain the confidentiality of information or matter to which both of the following apply by not making the record available for public access:

(i) the information or matter was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the ***foreign entity***) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the ***Commonwealth entity***);

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

## 37 Paragraph 50A(3)(b)

Repeal the paragraph, substitute:

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

(i) the information or matter was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the ***foreign entity***) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the ***Commonwealth entity***);

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

# *Privacy Act 1988*

## 38 Subsection 34(1)

Omit “or 33A,”.

## Part 4—Application provisions

### 39 Application—Part 2

An amendment made by an item in Part 2 applies in relation to requests for access made under section 15 of the *Freedom of Information Act 1982* that are received at or after the commencement of that item.

### 40 Application—items 35, 36 and 37

The amendments made by items 35, 36 and 37 apply for the purposes of determining whether access, or an extension of partial access, to a record referred to in section 31 of the *Archives Act 1983* will be given in accordance with an application made under section 40 of that Act that is received by the Archives at or after the commencement of those items.

# Schedule 4—Information Commissioner amendments

## Part 1—Main amendments

### *Freedom of Information Act 1982*

#### 1 Subsection 4(1)

Insert:

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

#### 2 Subsection 4(1)

Insert:

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

#### 3 Subsection 4(1)

Insert:

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

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

#### 4 Subsection 4(1)

Insert:

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

#### 5 Subsection 4(1)

Insert:

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

#### 6 Subsection 4(1)

Insert:

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

## 7 Subsection 4(1)

Insert:

***engage in conduct*** means:
(a) do an act; or
(b) omit to do an act.

## 8 Subsection 4(1)

Insert:

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

## 9 Subsection 4(1)

Insert:

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

## 10 Subsection 4(1)

Insert:

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

## 11 Subsection 4(1)

Insert:

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

## 12 Subsection 4(1)

Insert:

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

## 13 Subsection 4(1)

Insert:

***Information Commissioner*** has the meaning given by the *Australian Information Commissioner Act 2010*.

## 14 Subsection 4(1)

Insert:

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

## 15 Subsection 4(1)

Insert:

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

## 16 Subsection 4(1)

Insert:

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

## 17 Subsection 4(1)

Insert:

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

## 18 Subsection 4(1)

Insert:

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

## 19 Subsection 4(1)

Insert:

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

## 20 Subsection 4(1)

Insert:

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

## 21 Subsection 12(1)

Omit “(1)”.

## 22 Subsections 12(2) to (4)

Repeal the subsections.

## 23 Subsection 21(3)

Repeal the subsection.

## 24 Subparagraph 26(1)(c)(ii)

Omit “Ombudsman”, substitute “Information Commissioner”.

## 25 Paragraph 26(1)(c)

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

## 26 Paragraph 29(9)(b)

Omit “Ombudsman”, substitute “Information Commissioner”.

## 27 Subsection 29(9)

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

## 28 Section 31

Repeal the section, substitute:

### 31 Decision to impose charge—extended period for processing request

*Scope*

(1) This section applies if:

(a) on a particular day (the ***charge notice day***) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and

(b) the notice is received before the end of the period (the ***processing period***) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

*Processing period to be calculated disregarding period when charge unpaid*

(2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:

(a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the

regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;

(b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;

(c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

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

## 29 After section 51D

Insert:

### 51DA Decision not made on request for amendment or annotation within time—deemed refusal

(1) This section applies if:

(a) an application has been made to an agency or Minister under section 48; and

(b) the period of 30 days mentioned in section 51D (the ***initial decision period***) has ended since the day the application was received by, or on behalf of, the agency or Minister; and

(c) notice of a decision on the application has not been received by the applicant.

*Deemed refusal*

(2) Subject to this section:

(a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to amend or annotate the record of personal information to which the application relates on the last day of the initial decision period; and

(b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

*Agency or Minister may apply for further time*

(3) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the application.

(4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the application.

(5) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.

(6) Subsection (2) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
   (a) makes a decision on the application within the further time allowed; and
   (b) complies with any condition imposed under subsection (5).

(7) However, subsection (2) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (4) if the agency or Minister:
   (a) does not make a decision on the request within the further time allowed; or
   (b) does not comply with any condition imposed under subsection (5).

*No further time allowed*

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

## 30 Part VI (heading)

Repeal the heading, substitute:

# Part VI—Internal review of decisions

## 31 Before section 53

Insert:

### 52 Internal review of decisions—guide

> This Part provides for internal review of decisions by agencies, other than decisions made personally by the principal officer of an agency or the responsible Minister. Agencies are required to complete internal reviews within 30 days. However, this period may be extended.
>
> Sections 53A, 53B and 53C define the terms ***access refusal decision***, ***access grant decision*** and ***affected third party***. These terms are used in this Part and in Parts VII and VIIA.

## 32 Section 53

Omit “Part”, substitute “Act”.

## 33 Section 53

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

## 34 Sections 54 to 57

Repeal the sections, substitute:

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

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

(a) a decision refusing to give access to a document in accordance with a request;

(b) a decision giving access to a document but not giving, in accordance with the request, access to all documents to which the request relates;

(c) a decision purporting to give, in accordance with a request, access to all documents to which the request relates, but not actually giving that access;

(d) a decision to defer the provision of access to a document (other than a document covered by paragraph 21(1)(d) (Parliament should be informed of contents));

(e) a decision under section 29 relating to imposition of a charge or the amount of a charge;

(f) a decision to give access to a document to a qualified person under subsection 47F(5);

(g) a decision refusing to amend a record of personal information in accordance with an application made under section 48;

(h) a decision refusing to annotate a record of personal information in accordance with an application made under section 48.

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

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

An ***access grant decision*** is a decision covered by the following table:

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

**Access grant decisions**

| Item | If, in relation to a request for access to a document ... | the *access grant decision* is ... |
|---|---|---|
| 1 | consultation with a State under section 26A (documents affecting Commonwealth-State relations) is required | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47B (Commonwealth-State relations); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 2 | section 27 (business | a decision of an agency or Minister to give |

| **Access grant decisions** | | |
|---|---|---|
| **Item** | **If, in relation to a request for access to a document ...** | **the *access grant decision* is ...** |
| | documents) applies in relation to business information in the document | access to the document (or an edited copy of the document) because:<br>(a) the document is neither exempt under section 47, nor conditionally exempt under section 47G; or<br>(b) if the document is conditionally exempt under section 47G—access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5).<br>Note: Section 47 deals with documents disclosing trade secrets or commercially valuable information. Section 47G deals with other business documents. |
| 3 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a living person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
| 4 | section 27A (documents affecting personal privacy) applies in relation to personal information in the document about a deceased person | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:<br>(a) the document is not conditionally exempt under section 47F (personal privacy); or<br>(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |

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

The following table has effect:

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

## 54 Internal review—access refusal decision

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

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

## 54A Internal review—access grant decision

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

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

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

## 54B Internal review—application for review

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

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

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

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

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

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

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

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

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

## 54C Internal review—decision on internal review

*Scope*

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

*Decision*

(2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.

(3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

*Notice of decision*

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

## 54D Internal review—deemed affirmation of original decision

(1) This section applies if:
  (a) an application for internal review has been made to an agency; and
  (b) the period (the ***initial decision period***) of 30 days (as mentioned in subsection 54C(3)) has ended since the day the application for internal review was received by the agency; and
  (c) notice of a decision on the application has not been received by the internal review applicant.

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

*Agency may apply for further time*

(3) However, the agency may apply, in writing, to the Information Commissioner for further time to deal with the application.

(4) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency to deal with the application.

(5) If the Information Commissioner allows further time the Information Commissioner may impose any condition that he or she considers appropriate.

(6) Subsection (2) (deemed affirmation) does not apply, and is taken never to have applied, if the agency:

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

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

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

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

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

*No further time allowed*

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

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

This Part does not apply in relation to:

(a) a decision on internal review; or

(b) a decision in relation to the provision of access to a document upon a request that is taken to have been made under section 15AC or 51DA.

# Part VII—Review by Information Commissioner

## Division 1—Guide to this Part

### 54F Review by the Information Commissioner—guide

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

Division 2 sets out the key concepts for the Part.

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

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

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

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

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

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

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

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

An application for review of a decision of the Information Commissioner may be made to the Administrative Appeals Tribunal. A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner (see Division 10).

## Division 2—Key concepts

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

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

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

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

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

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

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

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

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

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

An ***IC reviewable decision*** is:

(a) a decision covered by subsection 54L(2) (access refusal decisions); or

(b) a decision covered by subsection 54M(2) (access grant decisions).

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

## Division 3—IC reviewable decisions

### 54L IC reviewable decisions—access refusal decisions

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

(2) This subsection covers the following decisions:

(a) an access refusal decision;

(b) a decision made by an agency on internal review of an access refusal decision (see section 54C);

(c) a decision refusing to allow a further period for making an application for internal review of an access refusal decision (under section 54B).

Note 1: An application for the review of an access refusal decision made for the purposes of paragraph (a) may be made regardless of whether the decision was the subject of internal review.

Note 2: If no decision is made on internal review within 30 days, a decision to affirm the original access refusal decision is taken to have been made (see section 54D).

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

### 54M IC reviewable decisions—access grant decisions

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

(2) This subsection covers the following decisions:
  (a) an access grant decision;
  (b) a decision made by an agency on internal review of an access grant decision (see section 54C).

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

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

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

## Division 4—IC review applications

## Subdivision A—Making an application

### 54N IC review applications—application

*Content of application*

(1) An IC review application must be in writing, and must:
  (a) give details of how notices under this Part may be sent to the IC review applicant (for example, by providing an electronic address to which notices may be sent by electronic communication); and

(b) include a copy of the notice given under section 26 of the IC reviewable decision for which an IC review is sought.

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

(2) The IC review application may contain particulars of the basis on which the IC review applicant disputes the IC reviewable decision.

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

(a) wishes to make an IC review application; and

(b) requires assistance to prepare the IC review application.

*Delivery of application*

(4) The IC review application must be sent to the Information Commissioner. The IC review application may be sent in any of the following ways:

(a) delivery to the Information Commissioner at the address of the Information Commissioner specified in a current telephone directory;

(b) postage by pre-paid post to an address mentioned in paragraph (a);

(c) sending by electronic communication to an electronic address specified by the Information Commissioner.

## 54P IC review applications—requirement to notify affected third parties

*Scope*

(1) This section applies if:

(a) an agency or Minister decides not to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A; and

(b) an IC review application is made for an IC review of that decision.

*Requirement to notify*

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

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

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

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

## 54Q IC review applications—circumstances in which not giving notice is appropriate

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

(2) An agency or Minister is not required to notify an affected third party for the document under subsection 54P(2) if:

(a) the agency or the Minister applies to the Information Commissioner for an order that it would not be appropriate to notify the affected third party in the circumstances covered by subsection (3); and

(b) the Information Commissioner makes the order.

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

(3) The circumstances covered by this subsection are whether notifying the affected third party would, or could reasonably be expected to, do any of the following:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation;

(b) prejudice the enforcement or proper administration of the law in a particular instance;

(c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;

(d) endanger the life or physical safety of any person;

(e) cause damage to the security, defence or international relations of the Commonwealth.

### 54R IC review applications—withdrawal

(1) An IC review applicant may, in writing, withdraw the IC review application at any time before the Information Commissioner makes a decision under section 55K.

(2) If the IC review application is withdrawn, it is taken never to have been made.

## Subdivision B—Time limits

### 54S IC review applications—time limits

*Access refusal decisions*

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

*Access grant decisions*

(2) An IC review application in relation to a decision covered by subsection 54M(2) (access grant decisions) must be made within 30 days after:

(a) if a decision is made on internal review of the decision—the day notice of the decision under section 54C was given to the affected third party for the document in relation to which the decision is made; or

(b) otherwise—the day notice under section 26A, 27 or 27A was given to the affected third party for the document in relation to which the decision was made.

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

## 54T IC review applications—extension of time

*Application for extension of time*

(1) A person may apply to the Information Commissioner for an extension of time for making an IC review application.

(2) The Information Commissioner may extend the time if the Information Commissioner is satisfied that it is reasonable in all the circumstances to do so.

(3) The time for making an IC review application may be extended under this section although the period mentioned in section 54S has ended.

*Requirement to notify*

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

*Person may oppose application*

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

*Reasonable opportunity to be heard*

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

## Division 5—Decision to review

### 54U Decision to review—interpretation

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

### 54V Decision to review—preliminary inquiries

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

### 54W Decision to review—discretion not to review

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

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

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

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

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

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

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

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

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

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

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

## 54X Decision to review—notice requirement if discretion not to review exercised

(1) This section applies if the Information Commissioner decides not to undertake an IC review, or not to continue to undertake an IC review.

(2) The Information Commissioner must, as soon as practicable, notify the review parties of the decision in writing.

(3) The notice must:
  (a) state the reasons for the Information Commissioner's decision; and
  (b) if the Information Commissioner makes a decision under paragraph 54W(b)—state that an application for review of the relevant IC reviewable decision may be made to the Tribunal under section 57A.

Note: See section 57A for the time within which the application for review must be made to the Tribunal.

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

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

## 54Y Decision to review—actual decisions made after IC review has commenced

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

(c) the Information Commissioner has not made a decision under section 54W (decision not to review) or 55K (decision on review) in relation to the deemed decision; and

(d) subsection 15AC(7), 51DA(6) or 54D(6) applies in relation to a decision (the ***actual decision***) made by the agency or Minister.

(2) The Information Commissioner must deal with the IC review application for review of the deemed decision as if it were an IC review application for the review of the actual decision, subject otherwise to this Part.

Note: When making the actual decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

## Division 6—Procedure in IC review

### 54Z Procedure in IC review—general notice requirement

Before undertaking an IC review, the Information Commissioner must inform:

(a) the person, agency or Minister who made the decision; or

(b) if the IC review application is made under section 54M (access grant decisions)—the person who made the request.

### 55 Procedure in IC review—general

(1) The Information Commissioner may, for the purposes of an IC review, review an IC reviewable decision by considering the documents or other material lodged with or provided to the Information Commissioner, and without holding a hearing, if:

(a) it appears to the Information Commissioner that the issues for determination on the IC review can be adequately determined in the absence of the review parties; and

(b) the Information Commissioner is satisfied that there are no unusual circumstances that would warrant the Information Commissioner holding a hearing; and

(c) none of the review parties have applied for a hearing under section 55B.

(2) The Information Commissioner may otherwise:

(a) conduct an IC review in whatever way he or she considers appropriate; and

(b) use any technique that the Information Commissioner considers appropriate to facilitate an agreed resolution of matters at issue in the IC review (for example by using techniques that are used in alternative dispute resolution processes); and

(c) allow a person to participate in an IC review by any means of communication; and

(d) obtain any information from any person, and make any inquiries, that he or she considers appropriate; and

(e) give written directions as to the procedure to be followed in relation to:

(i) IC reviews generally; or

(ii) a particular IC review.

Example 1: The Information Commissioner may allow a person under paragraph (2)(c) to participate in a hearing by telephone.

Example 2: The Information Commissioner may give written directions under subparagraph (2)(e)(ii) as to the procedure to be followed when dealing with confidential documents in a particular IC review.

(3) A direction given under paragraph (2)(e) is not a legislative instrument.

(4) Without limiting subsection (2), the Information Commissioner must, in relation to an IC review:

(a) conduct the IC review with as little formality and as little technicality as is possible given:

(i) the requirements of this Act; and

(ii) the requirements of any other law; and

(iii) a proper consideration of the matters before the Information Commissioner; and

(b) ensure that each review party is given a reasonable opportunity to present his or her case; and

(c) conduct the IC review in as timely a manner as is possible given the matters mentioned in subparagraphs (a)(i) to (iii).

(5) If the Information Commissioner holds a hearing, the Information Commissioner:

(a) must hold the hearing in public, unless the Information Commissioner is satisfied that it is not desirable to do so:

(i) because of the confidential nature of any evidence or matter relating to the proceeding; or

(ii) for any other reason; and

(b) is not bound by the rules of evidence; and

(c) may hold a part of the hearing in the absence of a review party (or a review party's representative) if it is necessary to do so to prevent disclosure to the review party (or the review party's representative) of any evidence or matter relating to the proceeding that is of a confidential nature.

## 55A Procedure in IC review—parties to proceeding

*Who are the review parties?*

(1) The parties to an IC review (the ***review parties***) are as follows:

(a) the IC review applicant;

(b) the principal officer of the agency, or the Minister, to whom the request was made;

(c) an affected third party (if any) required to be notified of the IC review application under section 54P (requirement to notify affected third parties);

(d) a party to the proceeding under subsection (3).

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

*Application to become a review party*

(2) If an IC review application is made in relation to an IC reviewable decision, a person whose interests are affected by the IC reviewable decision may apply, in writing, to the Information Commissioner to be a review party.

(3) The Information Commissioner may, by notice in writing, make a person who applies under subsection (2) an IC review party.

## 55B Procedure in IC review—application for hearing

(1) At any time during an IC review, a review party may apply to the Information Commissioner requesting that the Information Commissioner hold a hearing for the purposes of the IC review.

(2) The Information Commissioner must notify the other review parties of the application.

(3) The Information Commissioner must:
  (a) give all review parties a reasonable opportunity to make submissions on the application; and
  (b) decide whether or not to hold a hearing.

## 55C Procedure in IC review—representation

At the hearing of a proceeding before the Information Commissioner, a review party may:
  (a) appear in person; or
  (b) be represented by another person.

## 55D Procedure in IC review—onus

(1) Subject to subsection (2), in an IC review in relation to a request or an application under section 48, the agency or Minister concerned has the onus of establishing that:
  (a) a decision given in respect of the request or application is justified; or
  (b) the Information Commissioner should give a decision adverse to the IC review applicant.

(2) In an IC review of a decision for which an IC review application is made under section 54M (access grant decisions), the affected third party for the document in relation to which the decision was made has the onus of establishing that:
  (a) a decision refusing the request is justified; or
  (b) the Information Commissioner should give a decision adverse to the person who made the request.

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

## 55DA Decision-maker must assist Information Commissioner

In an IC review, the agency or Minister who made the IC reviewable decision must use the agency's or the Minister's best endeavours to assist the Information Commissioner to make his or her decision in relation to the IC review.

## 55E Procedure in IC review—inadequate reasons from decision maker

(1) This section applies if:
  (a) an IC review application is made in relation to an IC reviewable decision made by an agency or a Minister; and
  (b) the agency or Minister was required to provide a statement of reasons under section 26 for the decision to the person who made the request; and
  (c) the Information Commissioner believes that:
    (i) no statement has been provided; or
    (ii) the statement that has been provided is inadequate.

(2) The Information Commissioner may, by notice in writing, require the agency or Minister to provide an adequate statement of reasons as mentioned in subsection 26(1).

(3) If the Information Commissioner gives notice under subsection (2), the agency or Minister must provide the adequate statement of reasons to the IC review applicant and the Information Commissioner within:
  (a) the period specified in the notice; or
  (b) if no period is specified in the notice—28 days after the day the notice was given to the agency or Minister.

## 55F Procedure in IC review—review parties reach agreement

(1) This section applies if, at any stage of an IC review:
  (a) the review parties reach agreement as to the terms of a decision on an IC review:
    (i) on the IC review application; or
    (ii) in relation to a part of the IC review application; or
    (iii) in relation to a matter arising out of the IC review application; and
  (b) the agreement is acceptable to all of the review parties; and
  (c) the terms of the agreement are reduced to writing, signed by, or on behalf of, the review parties and given to the Information Commissioner; and

(d) the Information Commissioner is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Information Commissioner.

(2) The Information Commissioner may, if satisfied that it is appropriate:

(a) in the case of an agreement as to the terms of a decision of the Information Commissioner on the IC review—make a decision in accordance with those terms without completing the IC review; or

(b) in the case of an agreement that relates to a part of the proceeding or a matter arising out of the proceeding—in the Information Commissioner's decision on the IC review, give effect to the terms of the agreement without completing the IC review with respect to the part.

### 55G Procedure in IC review—revocation or variation of access refusal decision

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the ***original decision***) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the ***revised decision***) would have an effect of:

(a) giving access to a document in accordance with the request; or

(b) relieving the IC review applicant from liability to pay a charge; or

(c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

(a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and

(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an

IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

### 55H Procedure in IC review—reference of questions of law to Federal Court of Australia

(1) The Information Commissioner may, at any time during an IC review, refer a question of law arising in an IC review to the Federal Court of Australia for decision.

(2) The Information Commissioner may refer the question of law:
  (a) on the application of a review party; or
  (b) on the Information Commissioner's initiative.

(3) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it.

(4) The jurisdiction of the Federal Court of Australia may be exercised by a single judge of the Court.

(5) If a question of law is referred, the Information Commissioner must not, for the purposes of the IC review:
  (a) give a decision to which the question is relevant before the Federal Court of Australia makes a decision in relation to the reference; or
  (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question.

### 55J Procedure in IC review—sending of documents to, and disclosure of documents by, the Federal Court of Australia

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

## Division 7—Decision on IC review

### 55K Decision on IC review—decision of Information Commissioner

(1) After undertaking an IC review, the Information Commissioner must make a decision in writing:
  (a) affirming the IC reviewable decision; or
  (b) varying the IC reviewable decision; or
  (c) setting aside the IC reviewable decision and making a decision in substitution for that decision.

(2) For the purposes of implementing a decision on an IC review, the Information Commissioner may perform the functions, and exercise the powers, of the person who made the IC reviewable decision.

(3) A decision of the Information Commissioner on an IC review has the same effect as a decision of the agency or Minister who made the IC reviewable decision.

*Content of the decision*

(4) A decision on an IC review must include the following:
  (a) a statement of reasons for the decision;
  (b) a statement of the rights of the review parties to apply to the Tribunal for review of the decision under section 57A.

(5) However, a decision on an IC review must not include:
  (a) information of the kind referred to in subsection 25(1); or
  (b) exempt matter.

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

*Providing copy of decision*

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

*Copy of decision prima facie evidence*

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

(a) the document purports to be a copy of the decision; and

(b) the document purports to be certified by, or on behalf of, the Information Commissioner to be a true copy of the decision.

*Publication requirement*

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

### 55L Decision on IC review—no power to give access to exempt documents

(1) This section applies if it is established in proceedings on an IC review that a document is an exempt document.

(2) The Information Commissioner does not have power to decide that access to the document is to be given, so far as it contains exempt matter.

### 55M Decision on IC review—limitation on amending records

(1) The Information Commissioner may, in a decision under section 55K, make a decision that requires, or has the effect of requiring, that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Information Commissioner must not, in a decision under section 55K, make a decision that requires, or has the effect of requiring, that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

## 55N Decision on IC review—obligation to comply with decision

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

## 55P Decision on IC review—enforcement of decision against agency

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

(2) The application may be made by:
  (a) the Information Commissioner; or
  (b) the IC review applicant.

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

(4) An application under subsection (1) may only be made if:
  (a) the time has ended for making an application to the Tribunal under section 57A for review of the Information Commissioner's decision; and
  (b) such an application is not made before the end of the time.

## 55Q Decision on IC review—correction of errors

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

Example: The following are examples of obvious errors:
  (a) an obvious clerical or typographical error in the text of the decision or statement of reasons;
  (b) an inconsistency between the decision and the statement of reasons.

(2) The Information Commissioner may correct an obvious error:
  (a) on an application by a review party; or
  (b) on the Information Commissioner's initiative.

## Division 8—Information gathering powers

### 55R Information gathering powers—obliging production of information and documents

*Scope*

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

(2) This section applies subject to sections 55T (exempt documents generally) and 55U (particular exempt documents).

*Notice to produce*

(3) The Information Commissioner may, by written notice, require a person to, for the purposes of an IC review:
  (a) give the Information Commissioner information of a kind specified by the notice; or
  (b) produce to the Information Commissioner a document specified by the notice.

(4) The notice must:
  (a) be in writing; and
  (b) specify the place at which the person must comply with the notice; and
  (c) state that the person must comply with the notice:
    (i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or
    (ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.

*Offence for failure to comply*

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

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

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

## 55S Information gathering powers—dealings with documents

*What the Information Commissioner may do with documents*

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

(a) take possession of the documents;

(b) make copies of the documents;

(c) take extracts from the documents;

(d) hold the documents for a period that is necessary for the purposes of the IC review.

*Information Commissioner must permit access by those entitled*

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

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

## 55T Information gathering powers—production of exempt documents generally

*Scope*

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

(a) the principal officer of an agency or a Minister claims that the document is an exempt document; and

(b) section 55U does not apply to the document.

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

*Exempt document produced under obligation*

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

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

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

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

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

(a) the Information Commissioner;

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

### 55U Information gathering powers—production of national security and cabinet documents

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

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

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

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

### 55V Information gathering powers—further searches for a document

(1) This section applies to an IC review in relation to a request for access to a document if:
  (a) access to the document is refused under section 24A (document cannot be found etc.); or
  (b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.

(2) The Information Commissioner may require the agency or Minister concerned to conduct further searches for the document.

### 55W Information gathering powers—obliging persons to appear

*Notice to appear*

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

(2) The notice must:
  (a) be in writing; and
  (b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and
  (c) specify the place at which the person must comply with the notice.

*Offence for failure to comply*

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

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

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

## 55X Information gathering powers—administration of oath or affirmation

(1) If, by a notice under subsection 55W(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:
  (a) administer an oath or affirmation to the person; and
  (b) examine the person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

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

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

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

### 55Y Information gathering powers—no loss of legal professional privilege

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

### 55Z Information gathering powers—protection from liability

(1) This section applies if a person does any of the following in good faith for the purposes of an IC review:
  (a) gives information;
  (b) produces a document;
  (c) answers a question.

(2) If this section applies, then:
  (a) civil proceedings do not lie against a person because the person does any of the matters mentioned in paragraphs (1)(a) to (c); and
  (b) the person is not liable for a penalty under a provision of any law because the person does any of those matters.

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

## Division 9—Evidence by Inspector-General of Intelligence and Security

### 55ZA Evidence by Inspector-General of Intelligence and Security—scope

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

### 55ZB Evidence by Inspector-General of Intelligence and Security—request to give evidence

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

Inspector-General of Intelligence and Security to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if access to the document were given in accordance with the request; or

(b) whether giving access to the document in accordance with the request would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(2) Before determining that an agency or Minister must grant access to a copy of the document with deletions, the Information Commissioner must request the Inspector-General to appear personally and give evidence on:

(a) the damage that would, or could reasonably be expected to, be caused to:

(i) the security of the Commonwealth; or

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth;

if the proposed deletions were not made; or

(b) whether giving access to the document without the proposed deletions would divulge any information or matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

(3) Before hearing the evidence of the Inspector-General, the Information Commissioner must hear any evidence to be given or submissions to be made by, or on behalf of, the agency to which, or

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

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

### 55ZC Evidence by Inspector-General of Intelligence and Security—compliance with request

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

### 55ZD Evidence by Inspector-General of Intelligence and Security—procedural matters

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

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

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

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

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

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

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

(a) return the original of any document to the Information Commissioner or to the agency or Minister; and

(b) destroy any copies of or extracts taken from any document.

(6) The Inspector-General must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Inspector-General.

(7) The Inspector-General must permit the person to inspect the document at all reasonable times.

(8) The Information Commissioner must allow the Inspector-General a period within which to consider the documents mentioned in subsections (2) to (4) that is reasonable having regard to:

(a) the nature of the evidence that the Inspector-General has been requested to give; and

(b) the time required by the Inspector-General to perform the Inspector-General's other functions.

## Division 10—Appeals

### 56 Appeals—appeals to Federal Court of Australia on questions of law

(1) A review party may appeal to the Federal Court of Australia, on a question of law, from a decision of the Information Commissioner on an IC review.

(2) An appeal under this section must be instituted:

(a) either:

(i) not later than 28 days after the day a decision under section 55K of the Information Commissioner on an IC review is given to the review party; or

(ii) within the further time that the Federal Court of Australia allows; and

(b) in any way that is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court of Australia has jurisdiction to hear and determine appeals instituted under this section.

(4) The jurisdiction of the Federal Court of Australia under subsection (3) includes jurisdiction to make findings of fact under section 56A.

(5) The Federal Court of Australia:
  (a) must hear and determine the appeal; and
  (b) may make any order or orders that it thinks appropriate by reason of its decision.

(6) Without limiting subsection (5), the orders that the Federal Court of Australia may make include the following:
  (a) an order affirming the decision of the Information Commissioner;
  (b) an order setting aside the decision of the Information Commissioner and making a decision in substitution for the decision;
  (c) an order remitting the case to be considered and decided again by the Information Commissioner in accordance with the directions of the Court:
    (i) with or without the holding of a hearing; and
    (ii) with or without the hearing of further evidence.

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

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

(iv) the relative expense to the parties of the Court, rather than the Information Commissioner, making the findings of fact;

(v) the relative delay to the parties of the Court, rather than the Information Commissioner, making the findings of fact;

(vi) whether any of the parties considers that it is appropriate for the Court, rather than the Information Commissioner, to make the findings of fact;

(vii) such other matters (if any) as the Court considers relevant.

(2) For the purposes of making findings of fact under subsection (1), the Federal Court of Australia may:

(a) have regard to the evidence given in the IC review; and

(b) receive further evidence.

(3) Subsection (2) does not limit the Federal Court of Australia's power under subsection 56(6) to make an order remitting the case to be heard and decided again by the Information Commissioner.

# Part VIIA—Review by the Tribunal

## Division 1—Guide to this Part

### 57 Review by the Tribunal—guide

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

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

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

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

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

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

## Division 2—Tribunal reviewable decisions

### 57A Tribunal reviewable decisions—which decisions are reviewable?

(1) An application may be made to the Tribunal for review of the following decisions:

(a) a decision of the Information Commissioner under section 55K on an IC review;

(b) if the Information Commissioner makes a decision under paragraph 54W(b) (matters inappropriate for IC review)—the IC reviewable decision in relation to which the Information Commissioner makes the decision.

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

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

*Time for applying to Tribunal if Information Commissioner declines to review decision*

(2) Despite subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, for the purposes of paragraph 29(1)(d) of that Act, the prescribed time for a person to lodge an application for review of an IC reviewable decision mentioned in paragraph (1)(b) of this section is the period:

(a) starting on the day on which the decision by the Information Commissioner under paragraph 54W(b) of this Act is made; and

(b) ending on the 28th day after the day on which notice of the decision under paragraph 54W(b) was given to the person under section 54X of this Act.

## Division 3—Powers of Tribunal

### 35 Subsection 58(7)

Repeal the subsection.

## 36 After section 58

Insert:

### 58A Powers of Tribunal—requiring further searches

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

(a) access to the document is refused under section 24A (document cannot be found etc.); or

(b) access is purportedly given to the document (amongst others to which the request relates), but is not actually given.

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

### 58AA Powers of Tribunal—limitation on amending records

(1) The Tribunal may, in a decision on an application to the Tribunal under section 57A, make a decision that requires, or that has the effect of requiring, that an amendment be made to a record that relates to a record of an opinion only if the Tribunal is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(2) The Tribunal must not, in a decision on an application under section 57A, make a decision that requires, or that has the effect of requiring, that an amendment be made to a record if it is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

### 37 Before section 58B

Insert:

## Division 4—Procedure in Tribunal

### 38 Subsection 58B(1)

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

### 39 Section 58D

After “of the majority”, insert:

; and (c) in a case where 3 of those members are Deputy Presidents—be decided according to the opinion of the majority.

### 40 Sections 58F, 59 and 59A

Repeal the sections.

### 41 Section 60

Repeal the section, substitute:

### 60 Procedure in Tribunal—parties

(1) This section applies for the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in relation to proceedings under this Part.

(2) A decision given by a person on behalf of an agency is taken to have been given by the agency.

(3) The parties to a proceeding before the Tribunal for a review of a decision are as follows:

(a) the person who applied to the Tribunal for a review of the decision under section 57A;

(b) the person who made the request or application in respect of which the decision was made;

(c) the principal officer of the agency, or the Minister, to whom the request or application was made;

(d) any other person who is made a party to the proceeding by the Tribunal under subsection 30(1A) of the *Administrative Appeals Tribunal Act 1975*.

## 60AA Procedure in Tribunal—requirement to notify affected third parties

*Scope*

(1) This section applies if an application is made to the Tribunal under section 57A for the review of a decision not to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A (whether the decision is made by the Information Commissioner, an agency or a Minister).

*Requirement to notify*

(2) The agency to which, or the Minister to whom, the request was made for access to the document must, as soon as practicable, take all reasonable steps to notify the affected third party for the document of the application to the Tribunal.

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

Note 2: Notice is not required to be given in certain circumstances (see section 60AB).

Note 3: The affected third party may apply to be made a party to the proceeding by the Tribunal under subsection 30(1A) of the *Administrative Appeals Tribunal Act 1975*.

## 60AB Procedure in Tribunal—circumstances in which not giving notice is appropriate

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

(2) An agency or Minister is not required to notify an affected third party for the document under subsection 60AA(2) if:

(a) the agency or the Minister applies to the Tribunal for an order that it would not be appropriate to notify the affected third party in the circumstances covered by subsection (3); and

(b) the Tribunal makes the order.

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

(3) The circumstances covered by this subsection are whether notifying the affected third party would, or could reasonably be expected to, do any of the following:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation;

(b) prejudice the enforcement or proper administration of the law in a particular instance;

(c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;

(d) endanger the life or physical safety of any person;

(e) cause damage to the security, defence or international relations of the Commonwealth.

## 42 Section 61

Repeal the section, substitute:

### 61 Onus

(1) In proceedings under this Part for review of a decision in relation to a request, or in relation to an application under section 48 (a ***personal records application***):

(a) if an agency or a Minister applied for the review—the agency or Minister has the onus of establishing that the decision is not justified, or that the Tribunal should give a decision adverse to the applicant in relation to the request or the personal records application; or

(b) if the applicant in relation to the request or the personal records application applied for the review—the agency to which, or the Minister to whom, the request or personal records application was made has the onus of establishing that the decision is justified, or that the Tribunal should give a decision adverse to the applicant.

(2) However, in proceedings under this Part that relate to a decision to give access to a document to which a consultation requirement applies under section 26A, 27 or 27A, an affected third party for the document in relation to which the decision was made has, if the affected third party is a party to the proceeding, the onus of establishing that:

(a) a decision refusing to give access to the document is justified; or

(b) the Tribunal should give a decision adverse to the person who made the relevant request.

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

## 61A Modification of the *Administrative Appeals Tribunal Act 1975*

(1) The *Administrative Appeals Tribunal Act 1975* applies to proceedings under this Part in the way set out in the following table:

| **Modification of the *Administrative Appeals Tribunal Act 1975*** | | | |
|---|---|---|---|
| **Item** | **A reference to ...** | **in the following provision of the *Administrative Appeals Tribunal Act 1975*:** | **is taken to be a reference to ...** |
| 1 | the person who made the decision | subsection 29(11) (notification of review application) | each of the review parties. |
| 2 | the person who made the decision | (a) subsection 33(1AA) (requirement to assist Tribunal);<br>(b) paragraph 33(2A)(b) (procedural directions) | the agency or Minister who made the IC reviewable decision. |
| 3 | the person who made the decision that is the subject of the application for a review by the Tribunal | subsection 37(1) or (1AF) (lodging material with Tribunal) | the agency or Minister who made the IC reviewable decision. |
| 4 | the person who made the decision | subsection 37(1A) or (1B) (deadlines for lodging documents) | the agency or Minister who made the IC reviewable decision. |
| 5 | the person who made the decision to which the relevant proceeding relates | subsection 41(4) (stay of decisions being reviewed) | each of the review parties. |
| 6 | the person who made the decision | subsection 41(5) (stay of decisions being reviewed) | each of the review parties. |
| 7 | the person who made | subsection 42A(2) | the agency or Minister |

| **Modification of the *Administrative Appeals Tribunal Act 1975*** | | | |
|---|---|---|---|
| **Item** | **A reference to ...** | **in the following provision of the *Administrative Appeals Tribunal Act 1975*:** | **is taken to be a reference to ...** |
| | the decision | (dismissal for failure to appear) | who made the IC reviewable decision. |
| 8 | the person who made a decision | section 67A (giving of notices) | the person who made the decision or an agency. |

(2) The agency or Minister who made the IC reviewable decision is taken to have complied with the obligation under paragraph 37(1)(a) of the *Administrative Appeals Tribunal Act 1975* if the agency or Minister gives the AAT the number of copies prescribed by the regulations of the decision under section 55K in relation to which an application has been made to the Tribunal.

(3) Subsection (2) does not limit the powers of the Tribunal under section 38 of the *Administrative Appeals Tribunal Act 1975*.

### 43 Before section 63

Insert:

## Division 5—Protection of information in Tribunal

### 44 Before section 66

Insert:

## Division 6—Recommendations as to costs

### 45 Paragraph 66(1)(a)

Repeal the paragraph, substitute:

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

### 46 Subsections 66(1) and (3)

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

### 47 Before section 67

Insert:

## Division 7—Automatic stay of certain decisions

### 48 Paragraph 67(1)(a)

Omit "under section 55, to the Tribunal for review of a decision", substitute "under section 57A, to the Tribunal for review in relation to a decision".

### 49 Before Part VIII

Insert:

# Part VIIB—Investigations and complaints

## Division 1—Guide to this Part

### 68 Investigations and complaints—guide

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

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

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

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

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

The Information Commissioner has powers to obtain documents, to question persons and to enter premises (see Subdivision D of Division 2).

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

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

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

## Division 2—Information Commissioner investigations

### Subdivision A—Power to investigate

#### 69 Information Commissioner investigations—power to investigate

*Obligation to investigate*

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

*Discretion to investigate*

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

## Subdivision B—Making complaints

### 70 Information Commissioner investigations—making complaints

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

(2) A complaint must:
  (a) be in writing; and
  (b) identify the agency (also the ***respondent agency***) in respect of which the complaint is made.

(3) The Office of the Australian Information Commissioner must provide appropriate assistance to a person who:
  (a) wishes to make a complaint; and
  (b) requires assistance to formulate the complaint.

## Subdivision C—Decision to investigate

### 71 Information Commissioner investigations—interpretation

This Subdivision applies to a part of a complaint as if:
  (a) a reference to a complaint were a reference to the part of the complaint; and
  (b) a reference to an action were a reference to an action to which the part of the complaint relates.

### 72 Information Commissioner investigations—preliminary inquiries

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

### 73 Information Commissioner investigations—discretion not to investigate

The Information Commissioner may decide not to investigate, or not to continue to investigate, a complaint about an action made

under section 70 if the Information Commissioner is satisfied of any of the following:

(a) that the action is not taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under this Act;

(b) that:

(i) the complainant has or had a right to cause the action to be reviewed by the respondent agency, the Information Commissioner, a court or a tribunal; and

(ii) the complainant has not exercised, or did not exercise, the right; and

(iii) it would be, or would have been, reasonable for the complainant to exercise the right;

(c) that:

(i) the complainant has or had a right to complain about the action to another body; and

(ii) the complainant has not exercised, or did not exercise the right; and

(iii) it would be, or would have been, reasonable for the complainant to exercise the right;

(d) that the complainant has complained to the respondent agency, and the respondent agency:

(i) has dealt, or is dealing, adequately with the complaint; or

(ii) has not yet had an adequate opportunity to deal with the complaint;

(e) that the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;

(f) that the complainant does not have a sufficient interest in the subject matter of the complaint.

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

## 74 Information Commissioner investigations—transfer to Ombudsman

*Scope*

(1) This section applies if the Information Commissioner is satisfied that a complaint about an action could be more effectively or

appropriately dealt with by the Ombudsman under the *Ombudsman Act 1976*.

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

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

*Transfer of complaints to Ombudsman*

(2) The Information Commissioner:

(a) must consult the Ombudsman about the complaint with a view to avoiding inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and

(b) may decide not to investigate the action, or not to continue to investigate the action.

(3) If the Information Commissioner decides not to investigate, or not to continue to investigate, the action under paragraph (2)(b), the Information Commissioner must:

(a) transfer the complaint to the Ombudsman; and

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

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

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

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

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

### 75 Information Commissioner investigations—notice requirements

*Notice to respondent agency before commencing investigation*

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

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

(2) Subsection (3) applies if the Information Commissioner decides:
  (a) not to investigate, or not to continue to investigate, a complaint made under section 70; or
  (b) not to continue an investigation commenced at the Information Commissioner's initiative.

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

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

## Subdivision D—Investigation procedure

### 76 Information Commissioner investigations—conduct of investigation

(1) An investigation must be conducted in private and in a way the Information Commissioner thinks fit.

(2) For the purposes of an investigation, the Information Commissioner may obtain information from any officer of an agency, and make any inquiry, that he or she thinks is relevant to the investigation.

### 77 Information Commissioner investigations—general power to enter premises

(1) If a consenting person consents to entry under paragraph (2)(a), an authorised person may, at any reasonable time of day arranged with the consenting person:
  (a) enter and remain at the place; or

(b) carry on the investigation at that place; or

(c) inspect any documents relevant to the investigation kept at the place.

Note: For ***consenting person***, see subsection (3).

*Authority to enter premises*

(2) The authorised person may enter a place that:

(a) is occupied by an agency; or

(b) is occupied by a contracted service provider and used by the contracted service provider predominantly for the purposes of a Commonwealth contract.

(3) The authorised person may enter a place only if:

(a) consent to the entry has been given by the person (the ***consenting person***) who is:

(i) in the case of an agency—the principal officer of the agency; or

(ii) in the case of a contracted service provider—the person in charge (however described) of the contracted service provider; and

(b) before giving the consent, the authorised person informed the consenting person that he or she may refuse consent.

(4) The authorised person must leave the premises if the consenting person asks the authorised person to do so.

(5) This section is subject to section 78.

*Who is an **authorised person**?*

(6) An ***authorised person*** is:

(a) an information officer (within the meaning of the *Australian Information Commissioner Act 2010*); or

(b) an APS employee who:

(i) is performing the duties of an Executive Level 2, or equivalent, position (or a higher position) in the Office of the Australian Information Commissioner; and

(ii) is authorised by the Information Commissioner for the purposes of this section.

## 78 Information Commissioner investigations—places for which approval required before entry

*Specific places and areas*

(1) Subsection (2) applies if an authorised person proposes to enter, or carry on an investigation, at any of the following:

(a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;

(b) a place that is a prohibited area for the purposes of the *Defence (Special Undertakings) Act 1952* because of section 7 of that Act;

(c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act.

(2) If this subsection applies, the authorised person must not enter, or carry on an investigation, unless:

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

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

*Places in respect of which Attorney-General makes declaration*

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

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

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

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

## 79 Information Commissioner investigations—obliging production of information and documents

*Scope*

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

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

*Notice to produce*

(3) The Information Commissioner may, by written notice, require a person, for the purposes of the investigation:
  (a) to give the Information Commissioner information of the kind referred to in the notice; or
  (b) to produce to the Information Commissioner the document referred to in the notice.

(4) The notice must:
  (a) be in writing; and
  (b) specify the place at which the person must comply with the notice; and
  (c) state that the person must comply with the notice:
    (i) within a specified period that is not less than 14 days after the day on which the person is given the notice; or
    (ii) at a specified time that is not less than 14 days after the time at which the person is given the notice.

*Offence for failure to comply*

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

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

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

## 80 Information Commissioner investigations—dealings with documents

*What the Information Commissioner may do with documents*

(1) The Information Commissioner may do one or more of the following with respect to any documents produced in accordance with a notice under subsection 79(3):

(a) take possession of the documents;

(b) make copies of the documents;

(c) take extracts from the documents;

(d) hold the documents for a period that is necessary for the purposes of the investigation.

*Information Commissioner must permit access by those entitled*

(2) During an investigation the Information Commissioner must permit a person to inspect a document that the person would be entitled to inspect if the document were not held by the Information Commissioner.

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

## 81 Information Commissioner investigations—exempt documents

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

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

## 82 Information Commissioner investigations—obliging persons to appear

*Notice to require person to appear*

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

(2) The notice must:
  (a) be in writing; and
  (b) state that the person must comply with the notice at a specified time that is not less than 14 days after the time at which the person is given the notice; and
  (c) specify the place at which the person must comply with the notice.

*Offence for failure to comply*

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

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

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

## 83 Information Commissioner investigations—administration of oath or affirmation

(1) If, by a notice under subsection 82(1), the Information Commissioner requires a person to appear before him or her, the Information Commissioner may:
  (a) administer an oath or affirmation to the person; and
  (b) examine the person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

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

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

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

## 84 Information Commissioner investigations—no loss of legal professional privilege

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

## 85 Information Commissioner investigations—protection from liability

(1) This section applies if a person does any of the following in good faith for the purposes of an investigation:
  (a) gives information;
  (b) produces a document;
  (c) answers a question.

(2) If this section applies, then:
  (a) civil proceedings do not lie against a person because the person does any of the matters mentioned in paragraphs (1)(a) to (c); and
  (b) the person is not liable for a penalty under a provision of any law because the person does any of those matters.

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

## Subdivision E—Outcome of investigation

### 86 Information Commissioner investigations—notice on completion

*Requirement to notify respondent agency*

(1) If the Information Commissioner completes an investigation, the Information Commissioner must, as soon as practicable, notify the respondent agency.

(2) The notice must state the following:
  (a) the investigation results (see section 87);
  (b) the investigation recommendations (if any) (see section 88);
  (c) the reasons for the investigation results and the making of the investigation recommendations.

(3) The respondent agency may give to the Information Commissioner any comments about the notice that the agency wishes to make.

*Requirement to notify complainant (if any)*

(4) The Information Commissioner must give a copy (or a copy prepared in accordance with subsection (5)) of the notice to the complainant (if any).

(5) However, if the copy of the notice would contain matters of the kind mentioned in subsection 89C(2), the Information Commissioner must prepare a copy of the report to give to the complainant that excludes those matters.

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

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

The ***investigation results***, in relation to the investigation, are the following:
  (a) the matters that the Information Commissioner has investigated;
  (b) any opinions that the Information Commissioner has formed in relation to those matters;

(c) any conclusions that the Information Commissioner has reached in relation to those matters;

(d) any suggestions to the respondent agency the implementation of which the Information Commissioner believes might improve the processes of the agency;

(e) any other information of which the Information Commissioner believes the respondent agency ought to be aware.

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

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

## 89 Information Commissioner investigations—failure to implement investigation recommendation

*Scope*

(1) This section applies if:

(a) the Information Commissioner completes an investigation; and

(b) the Information Commissioner gives an agency a notice under section 86; and

(c) the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

*Giving implementation notices*

(2) The Information Commissioner may, by notice in writing (an ***implementation notice***), require the respondent agency to:

(a) give to the Information Commissioner particulars of any action that the agency proposes to take to implement the investigation recommendations for the investigation; and

(b) give the particulars within the time specified in the notice.

(3) The respondent agency must comply with the implementation notice.

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

*Scope*

(1) This section applies if:
  (a) the Information Commissioner gives an implementation notice to a respondent agency; and
  (b) the Information Commissioner is satisfied that:
    (i) the agency has not responded to the implementation notice within the time specified in the notice; or
    (ii) the agency has not taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

*Report to responsible Minister*

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

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

*Report to Minister*

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

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

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

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

### 89B Information Commissioner investigations—requirements for report

A report under subsection 89A(2) must:

(a) include a copy of the notice given to the respondent agency under subsection 86(2) (notice on completion) and the implementation notice; and

(b) give details of the respondent agency's response (if any) to the implementation notice; and

(c) state that the Information Commissioner is not satisfied that the agency has taken action that is adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation; and

(d) state the action that the Information Commissioner believes, if taken by the agency, would be adequate and appropriate in the circumstances to implement the investigation recommendations for the investigation.

### 89C Information Commissioner investigations—ensuring non-disclosure of certain matters

(1) This section applies to the following documents:

(a) a notice to a complainant under section 86 (notice on completion);

(b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

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

(a) exempt matter; or

(b) information of the kind referred to in subsection 25(1).

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

### 89D Information Commissioner investigations—limitation on amending records

*Scope*

(1) This section applies to the following documents:

(a) a notice to a complainant under section 86 (notice on completion);

(b) a report to the FOI Minister under subsection 89A(3) (failure to take action).

*Restrictions on amendments*

(2) The Information Commissioner may, in the document, recommend that an amendment be made to a record that relates to a record of an opinion only if he or she is satisfied of either (or both) of the following:

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

(3) The Information Commissioner must not, in the document, recommend that an amendment be made to a record if he or she is satisfied of either of the following:

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves the determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

### 89E Information Commissioner investigations—protection from civil action

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because the first-mentioned person complains about an action under section 70.

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

## Division 3—Complaints to Ombudsman

### 89F Complaints to Ombudsman—powers not affected

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

### 89G Complaints to Ombudsman—report must not contain certain information

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

(a) exempt matter; or

(b) information of the kind referred to in subsection 25(1).

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

### 89H Complaints to Ombudsman—certain rights not affected by certificates

(1) This section applies if:

(a) the Ombudsman has commenced an investigation of a decision made under this Act not to grant a request for access to a document; and

(b) the Attorney-General furnishes a certificate to the Ombudsman under paragraph 9(3)(a), (c) or (d) of the *Ombudsman Act 1976* in relation to that investigation.

(2) The certificate does not affect the Ombudsman's right to:

(a) seek from any person the reasons for a decision made under this Act not to give access to an exempt document; or

(b) require any person to give any information or to answer any questions concerning the decision.

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

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

(a) the opinion was based on a mistake of fact;

(b) the author of the opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion.

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

(a) the record is a record of a decision, under an enactment, by a court, tribunal, authority or person;

(b) the decision whether to amend the record involves determination of a question that the person seeking amendment of the record is, or has been, entitled to have determined by the agency (on internal review), the Information Commissioner, a court or tribunal.

## 50 Before section 91

Insert:

# Division 1—Vexatious applicants

### 89K Vexatious applicants—declaration

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

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

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

(2) The Information Commissioner may make a declaration:

(a) on the application of an agency or Minister; or

(b) on the Information Commissioner's initiative.

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

(4) The Information Commissioner must, as soon as practicable, give written notice to the person in relation to whom the vexatious applicant declaration is made.

## 89L Vexatious applicants—grounds for declaration

(1) The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:

(a) that:

(i) the person has repeatedly engaged in access actions; and

(ii) the repeated engagement involves an abuse of the process for the access action;

(b) a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;

(c) a particular access action in which the person engages would be manifestly unreasonable.

(2) A person engages in an ***access action*** if the person does any of the following:

(a) makes a request;

(b) makes an application under section 48;

(c) makes an application for internal review;

(d) makes an IC review application.

(3) The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.

(4) In this section:

***abuse of the process for an access action*** includes, but is not limited to, the following:

(a) harassing or intimidating an individual or an employee of an agency;

(b) unreasonably interfering with the operations of an agency;

(c) seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.

## 89M Vexatious applicants—effect of declaration

(1) A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.

(2) Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:

(a) an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:

(i) a request;

(ii) an application under section 48 (amendment of records);

(iii) an application for internal review; and

(b) the Information Commissioner may refuse to consider an IC review application made by the person.

(3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.

### 89N Vexatious applicants—review by Tribunal

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

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

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

Note 3: Section 30 of the *Administrative Appeals Tribunal Act 1975* sets out who the parties are to a proceeding before the Tribunal.

## Division 2—General

### 89P Staff to hold appropriate security clearance

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

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

### 90 Protection against civil liability—general

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

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

(b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or

(c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).

(2) No action for defamation, or breach of confidence, in respect of the publication of a document covered by subsection (3), lies against a person (including the author of the document) because the person supplied the document to a Minister or an agency.

(3) The publication of a document is covered by this subsection if:

(a) it is published as mentioned in paragraph (1)(a) or (c); or

(b) its publication is involved in, or results from, the giving of access to the document (or another document) as mentioned in paragraph (1)(b) or (c).

### 51 Subsection 91(1)

Repeal the subsection.

Note: The heading to section 91 is replaced by the heading "**Protection against civil liability—particular situations**".

### 52 Subsection 91(1A)

Omit "Subsection (1)", substitute "Section 90".

### 53 Paragraph 91(1C)(a)

Omit "26A(1)", substitute "26A(2)".

### 54 Paragraph 91(1C)(b)

Omit “27(1)”, substitute “27(4)”.

## 55 Paragraph 91(1C)(c)

Omit “27A(1)”, substitute “27A(3)”.

## 56 Section 92

Repeal the section, substitute:

### 92 Protection against criminal liability

(1) A Minister, or an officer of an agency, is not guilty of a criminal offence only because the Minister or officer:

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

(b) gives access to a document in good faith, in the belief that the access is required or permitted to be given in response to a request; or

(c) publishes, or gives access to, a document in good faith, in the belief that the publication or access is required or permitted otherwise than under this Act (whether or not under an express legislative power).

(2) A person is not guilty of a criminal offence only because the person shows a document, or is concerned in the showing of a document, to another person or organisation for any of the following purposes:

(a) consultation with a State under subsection 26A(2);

(b) enabling the other person or the organisation to make a submission under subsection 27(4);

(c) enabling the other person to make a submission under subsection 27A(3).

## 57 Section 93

Repeal the section, substitute:

### 93 Agencies to provide information to Information Commissioner

(1) This section applies to:

(a) an agency, in relation to documents of the agency; and
(b) each Minister, in relation to his or her official documents.

(2) The agency or Minister must give to the Information Commissioner the information that the Information Commissioner requires to prepare reports under section 30 of the *Australian Information Commissioner Act 2010*.

(3) The agency or Minister must comply with any requirements prescribed by the regulations regarding:
(a) the giving of the information; and
(b) the keeping of records for the purposes of this section.

## 93A Guidelines

(1) The Information Commissioner may, by instrument in writing, issue guidelines for the purposes of this Act.

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

(2) For the purposes of the performance of a function, or the exercise of a power, under this Act, regard must be had to any guidelines issued by the Information Commissioner under this section including, but not limited to, guidelines issued for the purposes of the following provisions:
(a) paragraph 9A(b) (information publication scheme);
(b) subsection 11B(5) (public interest factors);
(c) subsection 15(5A) (decisions on requests).

(3) Guidelines are not legislative instruments.

## 93B Review of operation of Act

(1) The Minister must cause a review of the operation of this Act to be undertaken.

(2) The review must:
(a) start 2 years after the commencement of this section; and
(b) be completed within 6 months.

Note: This section commences immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

# Part 2—Other amendments

## *Ombudsman Act 1976*

### 59 Subsections 6(4A) to (4C)

Repeal the subsections.

### 60 After section 6B

Insert:

### 6C Transfer of complaints to Information Commissioner

*Scope*

(1) This section applies if the Ombudsman is satisfied of either of the following:

(a) that:

(i) a complainant has complained, or could complain, to the Information Commissioner about an action taken by a Department or prescribed authority under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*; and

(ii) the action could be more appropriately or effectively dealt with by the Information Commissioner;

(b) a complaint about an action taken by a Department or prescribed authority has been the subject of a completed investigation by the Information Commissioner under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*.

*Requirement to consult with Information Commissioner*

(2) The Ombudsman:

(a) must consult the Information Commissioner about the complaint with a view to avoid inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and

(b) may decide not to investigate the action, or not to continue to investigate the action.

*Transfer to Information Commissioner*

(3) If the Ombudsman decides not to investigate, or not to continue to investigate, an action under paragraph (2)(b), the Ombudsman must:

(a) transfer the complaint to the Information Commissioner; and

(b) notify the complainant in writing that the complaint has been transferred; and

(c) give the Information Commissioner any information or documents that relate to the complaint in the possession, or under the control of, the Ombudsman.

(4) A complaint transferred under subsection (3) is taken to be a complaint made to the Information Commissioner under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*, as the case requires.

## 61 Subsection 19(4)

Omit “paragraph (1)(a) or under subsection (2)”, substitute “subsection (1) or (2)”.

## 62 Subparagraph 19R(3)(b)(iii)

Omit “(4A)”, substitute “(4D)”.

## 63 Subsection 19R(4) (table item 4, column 2)

Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

## 64 Subsection 35(6A)

Omit “6(4A)(e) or (4D)(e)”, substitute “6(4D)(e)”.

# Part 3—Application and transitional provisions

## 65 Application—Part 1

*Internal review and IC review*

(1) An amendment made by an item in Part 1 (other than an amendment covered by subitem (2), (3) or (4)) applies in relation to the following:

(a) requests for access made under section 15 of the *Freedom of Information 1982* that are received at or after the commencement of that item;

(b) applications under section 48 of that Act that are received at or after the commencement of that item.

*Tribunal review*

(2) The amendments made by items 44 and 46 apply in relation to applications to the Tribunal under section 57A of the *Freedom of Information Act 1982* (as amended by this Act) made at or after the commencement of those items.

*Investigation by the Information Commissioner*

(3) The amendments made by item 49 to insert new Part VIIB of the *Freedom of Information Act 1982* apply in relation to action taken by an agency (within the meaning of the *Freedom of Information Act 1982*, as amended by this Schedule) before, at or after the commencement of that item.

*Indemnity amendments*

(4) The following amendments apply in relation to the publication of, or the giving of access to, a document at or after the commencement of those amendments:

(a) the amendment made by item 50 to insert new section 90 of the *Freedom of Information Act 1982*;

(b) the amendments made by items 51, 52 and 56.

## 66 Application—Part 2

The amendments made by Part 2 apply in relation to a complaint made to the Ombudsman under the *Ombudsman Act 1976* at or after the commencement of that Part (whether or not the action to which the complaint relates was taken before, at or after that commencement).

## 67 Savings—complaints on foot continue under old law

(1) This item applies if:

(a) before the commencement of Part 2, a complaint is made to the Ombudsman under the *Ombudsman Act 1976*; and

(b) at the commencement of that Part, the Ombudsman has not informed the complainant of the result of the complaint under section 12 of that Act.

(2) Despite the amendments made to the *Ombudsman Act 1976* by Part 2, the Ombudsman must continue to deal with the complaint under the *Ombudsman Act 1976* as if those amendments had not been made.

# Schedule 5—Amendments consequential on the establishment of the Office of the Australian Information Commissioner

## *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

### 1 Subparagraph 212(2)(a)(vi)

Omit "Privacy Commissioner", substitute "Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

## *Australian Citizenship Act 2007*

### 2 Paragraph 43(2)(g)

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *Australian Human Rights Commission Act 1986*

### 4 Subsection 3(1) (definition of *Privacy Commissioner*)

Repeal the definition.

### 5 Paragraphs 20(4A)(b), (c) and (e)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 6 Subsection 20(4B)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 7 Section 43A

Omit "Privacy Commissioner" (wherever occurring), substitute "Information Commissioner".

Note: The heading to section 43A is altered by omitting "**Privacy Commissioner**" and substituting "**Information Commissioner**".

### 8 Section 43A

Omit "*Privacy Act 1988*", substitute "*Australian Information Commissioner Act 2010*".

## *Aviation Legislation Amendment (2008 Measures No. 2) Act 2009*

### 9 Subsections 4(1), (2) and (4)

Omit "Privacy Commissioner", substitute "Information Commissioner".

Note: The heading to section 4 is altered by omitting "**Privacy Commissioner**" and substituting "**Information Commissioner**".

### 10 Subsection 4(4)

Omit ", and may delegate any matter to a member of his or her staff as provided for by section 99 of that Act".

## *Child Care Act 1972*

### 11 Subsection 12P(3)

Omit "Privacy Commissioner", substitute "Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

## *Crimes Act 1914*

### 12 Paragraph 3ZQJ(2)(c)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 13 Paragraph 23YDAE(2)(g)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 14 Paragraph 23YO(2)(g)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 15 Subsection 23YUK(4) (paragraph (b) of the definition of *independent review*)

Omit "nominee of the Privacy Commissioner", substitute "a person nominated by the Information Commissioner in the performance of the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

### 16 Subsection 23YV(4) (paragraph (b) of the definition of *independent review*)

Omit "nominee of the Privacy Commissioner", substitute "a person nominated by the Information Commissioner in the performance of the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

### 17 Division 5 of Part VIIC (heading)

Repeal the heading, substitute:

## Division 5—Complaints to Information Commissioner

### 18 Subsection 85ZZ(1)

Omit "Privacy Commissioner", substitute "Information Commissioner".

Note: The heading to section 85ZZ is altered by omitting "**Privacy Commissioner's**" and substituting "**Information Commissioner's**".

### 19 After subsection 85ZZ(1)

Insert:

(1A) The functions conferred by subsection (1) are privacy functions for the purposes of the *Australian Information Commissioner Act 2010*.

### 20 Subsection 85ZZ(2)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 21 Subsection 85ZZA(1)

Omit "Privacy Commissioner", substitute "Information Commissioner".

Note: The heading to section 85ZZA is altered by omitting "**Privacy Commissioner**" and substituting "**Information Commissioner**".

### 22 Subsection 85ZZA(3)

Omit "Privacy Commissioner's", substitute "Information Commissioner's".

## 23 Subsections 85ZZC(1) and (2)

Omit "Privacy Commissioner", substitute "Information Commissioner".

## 24 Subsection 85ZZD(1)

Before "Commissioner", insert "Information".

Note: The heading to section 85ZZD is altered by omitting "**Privacy Commissioner**" and substituting "**Information Commissioner**".

## 25 Subsections 85ZZD(2) to (4)

Omit "Privacy Commissioner", substitute "Information Commissioner".

## 26 Subsection 85ZZF(1)

Omit "Privacy Commissioner", substitute "Information Commissioner".

# *Data-matching Program (Assistance and Tax) Act 1990*

## 27 Subsection 10(5) (definition of *sampling procedures*)

Omit "Privacy Commissioner", substitute "Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

## 28 Section 12

Repeal the section, substitute:

### 12 Guidelines relating to privacy

(1) The matching agency and the source agencies must comply with guidelines issued under this section.

(2) The Information Commissioner may, by legislative instrument, issue guidelines relating to the matching of data under this Act.

(3) The function conferred by subsection (2) is a privacy function for the purposes of the *Australian Information Commissioner Act 2010*.

(4) After the end of each financial year, each agency must give the Information Commissioner, and cause to be laid before each House of the Parliament, a report including the matters relating to the data-matching program carried out during the financial year that

are specified for the purposes of this subsection in guidelines issued under this section.

(5) After the 3-year period ending on 30 June 1998, and after each successive 3-year period, each agency must give the Minister responsible for the agency a report for presentation to the Parliament including all the details relating to the data-matching program carried out during the period that are specified for the purposes of this subsection in guidelines issued under this section.

Note: Section 34C of the *Acts Interpretation Act 1901* sets time limits for giving reports to Ministers and for presentation of reports to the Parliament.

(6) Despite section 12 of the *Legislative Instruments Act 2003*, guidelines issued under this section take effect from:

(a) the first day on which the guidelines are no longer subject to disallowance; or

(b) if the guidelines make provision for their commencement after that day—in accordance with that provision.

### 29 Subsection 13(1) (definition of *Commissioner*)

Omit "Privacy Commissioner", substitute "Information Commissioner acting in the performance of the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

### 30 Subsection 14(2)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 31 Schedule

Repeal the Schedule.

## *Environment Protection and Biodiversity Conservation Act 1999*

### 32 Paragraph 42(2)(e) of Schedule 1

Omit "Privacy Commissioner", substitute "Information Commissioner under the *Privacy Act 1988*".

### 33 Paragraph 53(2)(g) of Schedule 1

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *Fair Work Act 2009*

### 34 Paragraph 510(1)(c)

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *Fisheries Management Act 1991*

### 35 Paragraph 42(2)(e) of Schedule 1A

Omit "Privacy Commissioner", substitute "Information Commissioner under the *Privacy Act 1988*".

### 36 Paragraph 53(2)(g) of Schedule 1A

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *Migration Act 1958*

### 37 Paragraph 261AKD(2)(e)

Omit "Privacy Commissioner", substitute "Information Commissioner under the *Privacy Act 1988*".

### 38 Paragraph 336E(2)(g)

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *National Health Act 1953*

### 39 Subsection 135AA(3)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 40 Subsection 135AA(3)

Omit "written notice", substitute "legislative instrument".

### 41 After subsection 135AA(3)

Insert:

(3A) The issuing of guidelines under this section is a privacy function for the purposes of the *Australian Information Commissioner Act 2010*.

### 42 Subsection 135AA(4)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

### 43 Subsection 135AA(4)

Omit “written notice”, substitute “legislative instrument”.

### 44 Subsections 135AA(5A) and (6)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

### 45 Subsections 135AA(7) to (10)

Repeal the subsections, substitute:

*When guidelines take effect*

(8) Despite section 12 of the *Legislative Instruments Act 2003*, guidelines take effect from:

(a) the first day on which they are no longer liable to be disallowed; or

(b) if the guidelines provide for their commencement after that day—in accordance with that provision.

### 46 Subsection 135AB(2)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## *National Health and Medical Research Council Act 1992*

### 48 Section 4 (definition of *Privacy Commissioner*)

Repeal the definition.

### 49 Subparagraphs 61(4)(b)(i) and (ii)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

### 50 Paragraphs 61(5)(c) and (d)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

### 51 Subsection 61(6)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## *Privacy Act 1988*

### 52 Subsection 6(1) (definition of *Commissioner*)

Repeal the definition, substitute:

> ***Commissioner*** means the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010*.

### 53 Part IV (heading)

Repeal the heading, substitute:

# Part IV—Functions of the Information Commissioner

### 54 Division 1 of Part IV

Repeal the Division.

### 55 Subsections 31(4), 32(2) and 36(1)

Omit "Privacy".

### 56 Sections 96, 97 and 99

Repeal the sections.

### 57 Introduction to Schedule 2

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 58 Clause 6.1 of Schedule 2

Omit "Privacy Commissioner", substitute "Information Commissioner".

## *Telecommunications Act 1997*

### 59 Paragraphs 117(1)(j) and (k)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 60 Subsection 118(1) (note)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 61 Subsection 118(4A)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## 62 Subsection 121(1A)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## 63 Subsection 122(3)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## 64 Subsection 130(1) (note)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

## 65 Subsections 134(2) and (3)

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

Note: The heading to section 134 is altered by omitting “**Privacy**” and substituting “**Information**”.

## 66 Paragraph 295M(1)(a)

Omit “Privacy Commissioner” (first occurring), substitute “Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)”.

## 67 Paragraph 295M(1)(a)

Omit “Privacy Commissioner” (last occurring), substitute “Information Commissioner”.

## 68 Section 295ZC

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

Note: The heading to section 295ZC is altered by omitting “**Privacy Commissioner**” and substituting “**Information Commissioner**”.

## 69 Subsection 309(1)

Omit “Privacy Commissioner” (wherever occurring), substitute “Information Commissioner”.

Note: The heading to section 309 is altered by omitting “**Privacy Commissioner**” and substituting “**Information Commissioner**”.

## 70 After subsection 309(1)

Insert:

(1A) The function conferred on the Information Commissioner by subsection (1) is a privacy function for the purposes of the *Australian Information Commissioner Act 2010*.

### 71 Subsections 309(2) to (4)

Omit "Privacy Commissioner" (wherever occurring), substitute "Information Commissioner".

### 72 Subsection 309(5)

Repeal the subsection (including the note).

### 73 Paragraphs 515A(2)(a) and (b)

Omit "Privacy Commissioner", substitute "Information Commissioner".

Note: The heading to section 515A is altered by omitting "**Privacy Commissioner**" and substituting "**Information Commissioner**".

### 74 Paragraphs 515A(3)(a) and (c)

Omit "Privacy Commissioner", substitute "Information Commissioner".

### 75 Subsection 515A(4)

Omit "Privacy Commissioner" (wherever occurring), substitute "Information Commissioner".

## *Telecommunications (Interception and Access) Act 1979*

### 76 Subsection 183(3)

Omit "Privacy Commissioner", substitute "Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*)".

## *Torres Strait Fisheries Act 1984*

### 77 Paragraph 42(2)(e) of Schedule 2

Omit "Privacy Commissioner", substitute "Information Commissioner under the *Privacy Act 1988*".

### 78 Paragraph 53(2)(g) of Schedule 2

Omit "Privacy Commissioner", substitute "Information Commissioner".

# Schedule 6—Other amendments

## Part 1—Amendments to the Freedom of Information Act 1982

### *Freedom of Information Act 1982*

#### 1 Subsection 4(1) (definition of *agency*)

Omit “, a prescribed authority or an eligible case manager”, substitute “or a prescribed authority”.

#### 2 Subsection 4(1)

Insert:

***Commonwealth contract*** means a contract to which all of the following apply:

(a) the Commonwealth or an agency is, or was, a party to the contract;

(b) under the contract, services are, or were, to be provided:

(i) by another party; and

(ii) for or on behalf of an agency; and

(iii) to a person who is not the Commonwealth or an agency;

(c) the services are in connection with the performance of the functions, or the exercise of the powers, of an agency.

#### 3 Subsection 4(1)

Insert:

***contracted service provider***, for a Commonwealth contract, means an entity that is, or was:

(a) a party to the Commonwealth contract; and

(b) responsible for the provision of services under the Commonwealth contract.

#### 4 Subsection 4(1)

Insert:

***defence intelligence document*** has the meaning given by paragraph 7(2C)(a).

## 5 Subsection 4(1) (definition of *Department*)

Omit all the words after "Commonwealth".

## 6 Subsection 4(1) (paragraph (d) of the definition of *document*)

Repeal the paragraph, substitute:

(d) material maintained for reference purposes that is otherwise publicly available; or

## 7 Subsection 4(1) (definition of *document of an agency*)

Repeal the definition, substitute:

***document of an agency***: a document is ***a document of an agency*** if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency; or

(b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.

## 8 Subsection 4(1)

Insert:

***electronic communication*** has the same meaning as in the *Electronic Transactions Act 1999*.

## 9 Subsection 4(1) (definition of *eligible case manager*)

Repeal the definition.

## 10 Subsection 4(1)

Insert:

***intelligence agency document*** has the meaning given by paragraph 7(2A)(a).

## 11 Subsection 4(1)

Insert:

***practical refusal reason*** has the meaning given by section 24AA.

## 12 Subsection 4(1) (paragraphs (b) and (c) of the definition of *principal officer*)

Repeal the paragraphs, substitute:

(b) in relation to a prescribed authority:

(i) if the regulations declare an office to be the principal office of the authority—the person holding, or performing the duties of, that office;

(ii) if the authority is an Agency (within the meaning of the *Public Service Act 1999*) other than a Department and subparagraph (i) does not apply—the Agency Head (within the meaning of the *Public Service Act 1999*) of the authority;

(iii) if neither subparagraph (i) nor (ii) applies—the person responsible for the day-to-day management of the authority;

(iv) if the authority is constituted by one person and none of subparagraphs (i) to (iii) applies—that person;

(v) if the authority is constituted by 2 or more persons and none of subparagraphs (i) to (iv) applies—the person who is entitled to preside at any meeting of the authority at which he or she is present.

## 13 Subsection 4(1)

Insert:

***request consultation process*** has the meaning given by section 24AB.

## 14 Subsection 4(1) (paragraph (d) of the definition of *responsible Minister*)

Omit “or”.

## 15 Subsection 4(1) (paragraph (e) of the definition of *responsible Minister*)

Repeal the paragraph.

## 16 Subsection 4(1)

Insert:

***subcontractor***, for a Commonwealth contract, means an entity:

(a) that is, or was, a party to a contract (the ***subcontract***):
  (i) with a contracted service provider for the Commonwealth contract; or
  (ii) with another subcontractor for the Commonwealth contract (under a previous application of this definition); and
(b) that is, or was, responsible under the subcontract for the provision of services for the purposes (whether direct or indirect) of the Commonwealth contract.

## 17 Subsection 4(8)

Repeal the subsection.

## 18 Section 6B

Repeal the section.

## 19 Before section 7

Insert:

### 6C Requirement for Commonwealth contracts

(1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.

(2) The agency must take contractual measures to ensure that the agency receives a document if:
  (a) the document is created by, or is in the possession of:
    (i) a contracted service provider for the Commonwealth contract; or
    (ii) a subcontractor for the Commonwealth contract; and
  (b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and
  (c) the agency receives a request for access to the document.

## 20 Subsection 7(2A)

Repeal the subsection, substitute:

(2A) An agency is exempt from the operation of this Act in relation to the following documents:

(a) a document (an ***intelligence agency document***) that has originated with, or has been received from, any of the following:

(i) the Australian Secret Intelligence Service;

(ii) the Australian Security Intelligence Organisation;

(iii) the Inspector-General of Intelligence and Security;

(iv) the Office of National Assessments;

(v) the Defence Imagery and Geospatial Organisation;

(vi) the Defence Intelligence Organisation;

(vii) the Defence Signals Directorate;

(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

## 21 Subsection 7(2B)

Repeal the subsection, substitute:

(2B) A Minister is exempt from the operation of this Act in relation to the following documents:

(a) an intelligence agency document;

(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.

(2C) An agency is exempt from the operation of this Act in relation to the following documents:

(a) a document (a ***defence intelligence document***) that has originated with, or has been received from, the Department of Defence and that is in respect of:

(i) the collection, reporting or analysis of operational intelligence; or

(ii) special access programs, under which a foreign government provides restricted access to technologies;

(b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the

extent that it contains such a summary, extract or information.

(2D) A Minister is exempt from the operation of this Act in relation to the following documents:

(a) a defence intelligence document;

(b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the extent that it contains such a summary, extract or information.

## 22 After paragraph 13(1)(d)

Insert:

or (e) a program or related material (within the meaning of the *National Film and Sound Archive Act 2008*) in the collection of the National Film and Sound Archive;

## 23 After paragraph 15(2)(a)

Insert:

(aa) state that the request is an application for the purposes of this Act; and

Note 1: The following heading to subsection 15(1) is inserted "*Persons may request access*".

Note 2: The following heading to subsection 15(2) is inserted "*Requirements for request*".

## 24 Paragraphs 15(2)(c) to (e)

Repeal the paragraphs, substitute:

(c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

## 25 After subsection 15(2)

Insert:

(2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:

(a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;

(b) postage by pre-paid post to an address mentioned in paragraph (a);

(c) sending by electronic communication to an electronic address specified by the agency or Minister.

## 26 At the end of subsection 15(3)

Add:

Note: An agency or Minister may refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking the request consultation process (see section 24).

Note: The following heading to subsection 15(3) is inserted "*Agency required to assist*".

## 27 After subsection 15(5)

Insert:

(5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.

Note: The following heading to subsection 15(5) is inserted "*Timeframes for dealing with request*".

## 28 Paragraph 15(6)(a)

Omit "to be taken to be".

Note: The following heading to subsection 15(6) is inserted "*Extension of processing period to comply with requirements of section 26A, 27 or 27A*".

## 29 At the end of section 15

Add:

*Extension of processing period to consult foreign entity*

(7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:

(a) consult one of the following:

(i) a foreign government;

(ii) an authority of a foreign government;

(iii) an international organisation; and

(b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).

(8) If this subsection applies:

(a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and

(b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

## 30 After section 15

Insert:

### 15AA Extension of time with agreement

An agency or Minister may extend the period referred to in paragraph 15(5)(b) for dealing with a request, or that period as extended under subsection 15(6) or (8) (consultation), by a further period of no more than 30 days if:

(a) the applicant agrees in writing to the extension; and

(b) the agency or Minister gives written notice of the extension to the Information Commissioner as soon as practicable after the agreement is made.

### 15AB Extension of time for complex or voluminous requests

(1) An agency or Minister may apply to the Information Commissioner for an extension of the period referred to in paragraph 15(5)(b) for dealing with a request if the agency or Minister considers that the period is insufficient to deal adequately with a request because the request is complex or voluminous.

(2) If the Information Commissioner is satisfied that the application is justified, the Information Commissioner may, by written instrument, extend the period by a further period of 30 days, or such other period as the Information Commissioner considers appropriate.

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

(3) The Information Commissioner must, as soon as practicable, inform the following persons of the period for which the extension has been given:
  (a) the applicant;
  (b) the agency or Minister.

## 15AC Decision not made on request within time—deemed refusal

*Scope*

(1) This section applies if:
  (a) a request has been made to an agency or Minister; and
  (b) the period (the ***initial decision period***) covered by subsection (2) has ended since the day the request was received by, or on behalf of, the agency or Minister; and
  (c) notice of a decision on the request has not been received by the applicant.

(2) The initial decision period covered by this subsection is the period of 30 days mentioned in paragraph 15(5)(b) (or that period as extended, otherwise than under this section).

*Deemed refusal*

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

*Agency or Minister may apply for further time*

(4) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the request.

(5) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the request.

(6) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.

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

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

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

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

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

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

*No further time allowed*

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

## 31 Paragraph 17(1)(a)

Omit “of the kind described in subsection 24(1)”, substitute “in relation to which a practical refusal reason exists”.

## 32 Section 24

Repeal the section, substitute:

### 24 Power to refuse request—diversion of resources etc.

(1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

(b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

(2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:

(a) the requests relate to the same document or documents; or

(b) the requests relate to documents, the subject matter of which is substantially the same.

## 24AA When does a *practical refusal reason* exist?

(1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

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

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

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

(2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

(a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;

(b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making a copy, or an edited copy, of the document;
(d) notifying any interim or final decision on the request.

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
(a) any reasons that the applicant gives for requesting access; or
(b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

## 24AB What is a *request consultation process*?

*Scope*

(1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

*Requirement to notify*

(2) The agency or Minister must give the applicant a written notice stating the following:
(a) an intention to refuse access to a document in accordance with a request;
(b) the practical refusal reason;
(c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;
(d) details of how the applicant may contact the contact person;
(e) that the period (the ***consultation period***) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

*Assistance to revise request*

(3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

(4) For the purposes of subsection (3), ***reasonable steps*** includes the following:

(a) giving the applicant a reasonable opportunity to consult with the contact person;

(b) providing the applicant with any information that would assist the applicant to revise the request.

*Extension of consultation period*

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

*Outcome of request consultation process*

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

(a) withdraw the request;

(b) make a revised request;

(c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:

(a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or

(b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

*Consultation period to be disregarded in calculating processing period*

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

*No more than one request consultation process required*

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

## 33 Section 24A

Repeal the section, substitute:

### 24A Requests may be refused if documents cannot be found, do not exist or have not been received

*Document lost or non-existent*

(1) An agency or Minister may refuse a request for access to a document if:
  (a) all reasonable steps have been taken to find the document; and
  (b) the agency or Minister is satisfied that the document:
    (i) is in the agency's or Minister's possession but cannot be found; or
    (ii) does not exist.

*Document not received as required by contract*

(2) An agency may refuse a request for access to a document if:
  (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  (b) the agency has not received the document; and
  (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

### 34 Subsection 29(1)

Omit "(not being an application fee)".

### 35 Section 30A

Repeal the section.

### 36 Section 92A

Repeal the section.

### 37 Paragraph 94(2)(a)

Omit "the applicant is included in one class of applicant or another class of applicant or according to whether".

## 38 Division 1 of Part II of Schedule 2 (after the item relating to the Commonwealth Scientific and Industrial Research Organisation)

Insert:

Department of Defence, in relation to documents in respect of:

(a) the collection, reporting or analysis of operational intelligence; or

(b) special access programs, under which a foreign government provides restricted access to technologies.

## 39 Division 1 of Part II of Schedule 2 (the item relating to the Federal Airports Corporation)

Repeal the item.

## Part 2—Application provisions

### 40 Application—items 2, 3, 7, 16, 19 and 33

The amendments made by items 2, 3, 7, 16, 19 and 33 apply in relation to contracts entered into at or after the commencement of those items.

### 41 Application—items 4, 6, 8, 10 to 13, 17, 20 to 32 and 34 to 39

The amendments made by items 4, 6, 8, 10 to 13, 17, 20 to 32 and 34 to 39 apply in apply in relation to the following:

(a) requests for access made under section 15 of the *Freedom of Information 1982* that are received at or after the commencement of those items;

(b) applications under section 48 of that Act that are received at or after the commencement of those items.

# Part 3—Amendment of other Acts

## *Administrative Appeals Tribunal Act 1975*

### 41A After paragraph 49(1)(c)

Insert:

(ca) the Australian Information Commissioner holding office under the *Australian Information Commissioner Act 2010*; and

### 41B Subsection 49(3)

Omit "or (c)", substitute ", (c) or (ca)".

## *Australian Crime Commission Act 2002*

### 42 Schedule 1

Omit "*Freedom of Information Act 1982*, section 58".

## *Environment Protection and Biodiversity Conservation Act 1999*

### 43 Paragraph 93(3A)(a)

Repeal the paragraph, substitute:

(a) is:

(i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

### 44 Subparagraph 131AA(4)(a)(i)

Repeal the subparagraph, substitute:

(i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents

affecting national security, defence or international relations); or

(ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

## 45 Paragraph 133(4)(a)

Repeal the paragraph, substitute:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

## 46 Paragraph 135A(4)(a)

Repeal the paragraph, substitute:

(a) is:

(i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

## 47 Paragraph 143(6)(a)

Repeal the paragraph, substitute:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

## 48 Paragraph 146B(4)(a)

Repeal the paragraph, substitute:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

## *Inspector-General of Intelligence and Security Act 1986*

### 49 Subsection 34(1AA)

Before “section 60A”, insert “Division 9 of Part VII or”.

### 50 Paragraph 34(1AA)(a)

Before “section”, insert “Division or”.

### 51 Subsection 34(5)

Before “section 60A”, insert “Division 9 of Part VII or”.

### 52 After paragraph 34(5)(c)

Insert:

(ca) if the information is obtained by the person because the person is performing functions or duties or exercising powers under Division 9 of Part VII of the *Freedom of Information Act 1982*—for the purposes of that Division; and

# Schedule 7—Privacy Commissioner transition

## Part 1—Preliminary

### 1 Definitions

(1) In this Schedule:

***commencement day*** means the day on which the new law commences.

***Information Commissioner*** means the Australian Information Commissioner appointed under section 14 of the new law.

***new law*** means the *Australian Information Commissioner Act 2010*.

***old law*** means Division 1 of Part IV of the *Privacy Act 1988* as in force immediately before the commencement day.

***Privacy Commissioner*** means the Privacy Commissioner appointed under section 19A of the old law.

(2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

(3) Subject to subitem (2), an expression used in this Schedule that is also used in the *Privacy Act 1988* has the same meaning in this Schedule as it has in that Act.

(4) Subject to subitems (2) and (3), an expression used in this Schedule that is also used in the *Freedom of Information Act 1982* has the same meaning in this Schedule as it has in that Act.

(5) To avoid doubt, a reference in this Schedule to an Act, or a provision of an Act, that is amended by this Act is, in relation to a time on or after the commencement day, taken to be a reference to the provision as so amended.

# Part 2—Office holders, staff and consultants

## 2 Privacy Commissioner

(1) The person holding office as the Privacy Commissioner under section 19A of the old law immediately before the commencement day is taken to have been appointed as the Privacy Commissioner by the Governor-General under subsection 14(4) of the new law for the balance of the person's term of appointment that remained immediately before the commencement day.

(2) The Privacy Commissioner is taken to have been appointed on the same terms and conditions as applied immediately before the commencement day.

(3) This item does not prevent those terms and conditions being varied after the commencement day.

## 3 Staff

*Existing agreements to continue*

(1) Subitem (2) applies if:

(a) on or after the commencement day, an APS employee is moved, because of a determination under section 72 of the *Public Service Act 1999*, from the Office of the Privacy Commissioner to the Office of the Australian Information Commissioner; and

(b) the employee's employment in the Office of the Privacy Commissioner was subject to any of the following agreements:

(i) a collective agreement;

(ii) an enterprise agreement;

(iii) an ITEA;

(iv) an AWA or pre-reform AWA (and therefore also a collective agreement which had no effect while the AWA or pre-reform AWA operated in relation to the employee);

(v) a pre-reform certified agreement.

(2) The agreement concerned has effect after the move, in relation to the employee's employment, as if it had been made with the Information Commissioner.

*Regulations*

(3) The regulations may provide for other matters of a transitional nature in relation to the transfer of employees from the Office of the Privacy Commissioner to the Office of the Australian Information Commissioner.

*Definitions*

(4) In this item:

***AWA*** has the meaning given by clause 1 of Schedule 7A to the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note: ***AWA*** is short for Australian workplace agreement.

***collective agreement*** has the meaning given by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

***enterprise agreement*** has the meaning given by section 12 of the *Fair Work Act 2009*.

***ITEA*** has the meaning given by section 326 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note: ***ITEA*** is short for individual transitional employment agreement.

***pre-reform AWA*** has the meaning given by clause 1 of Schedule 7 to the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

***pre-reform certified agreement*** has the meaning given by clause 1 of Schedule 7 to the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## 4 Consultants

(1) A person engaged as a consultant under subsection 26A(3) of the old law immediately before the commencement day is taken, on and after the commencement day, to have been engaged by the Information Commissioner as a consultant under section 24 of the new law.

(2) The person is taken to have been engaged on the same terms and conditions as applied to the person immediately before the commencement day.

(3) This item does not prevent those terms and conditions being varied after the commencement day.

# Part 3—Things done by, or in relation to, the Privacy Commissioner

## 5 Things done by, or in relation to, Privacy Commissioner

(1) If a thing was done by, or in relation to, the Privacy Commissioner before the commencement day, for a purpose, then the thing is taken, on and after the commencement day, to have been done by, or in relation to, the Information Commissioner for the same purpose.

(2) In this item, doing a thing includes making an instrument.

(3) The Minister may, by written instrument, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Privacy Commissioner.

(4) A determination under subitem (3) is not a legislative instrument.

## 6 Consultations by, and with, Privacy Commissioner

(1) A consultation being undertaken for the purposes of a provision of an Act (or an instrument under an Act) that was started by the Privacy Commissioner before the commencement day may be continued by the Information Commissioner in accordance with that provision on or after the commencement day.

(2) If, after undertaking consultation in accordance with a provision covered by subitem (1), the Privacy Commissioner would have been required or permitted to make a decision (or take another specified action), the Information Commissioner may make the decision (or take the specified action) after completing the consultation.

## 7 Comments sought, but not received, by Privacy Commissioner

(1) This item applies if:

(a) the Privacy Commissioner gave a notice in accordance with a provision of an Act to a person for the purpose of:

(i) seeking the person's views before making a decision; or

(ii) giving the person an opportunity to be heard before making a decision; and

(b) the person did not respond to the Privacy Commissioner before the commencement day.

(2) The person may respond to the Information Commissioner in accordance with the provision of the Act on or after the commencement day.

## 8 Approval sought from, but not given by, Privacy Commissioner

(1) This item applies if:

(a) the approval of the Privacy Commissioner was sought under a provision of an Act (or an instrument under an Act) for a program protocol, guidelines, code or other instrument, or for the variation or revocation of such a protocol, guidelines, code or instrument; and

(b) the Privacy Commissioner did not give approval before the commencement day.

(2) On or after the commencement day, the Information Commissioner may give approval in accordance with the provision in accordance with which the approval was sought.

## 9 Decisions made, but not implemented, by Privacy Commissioner

(1) This item applies if:

(a) the Privacy Commissioner made a decision in accordance with a provision of the *Privacy Act 1988*; and

(b) having made the decision, the Privacy Commissioner was required to take a step to implement it; and

(c) the Privacy Commissioner did not take the step before the commencement day.

(2) The Information Commissioner may take the step in accordance with the provision to implement the decision on or after the commencement day.

(3) In this item, ***make a decision*** includes forming a view or being satisfied of a matter.

## 10 Privacy Advisory Committee giving advice to Privacy Commissioner

(1) This item applies if:

(a) the Privacy Advisory Committee was requested to advise the Privacy Commissioner in accordance with the functions conferred on the Committee by section 83 of the *Privacy Act 1988*; and

(b) the Committee did not advise the Privacy Commissioner before the commencement day.

(2) The Committee may advise the Information Commissioner in accordance with the functions conferred by section 83 of the *Privacy Act 1988* on or after the commencement day.

# Part 4—Investigations

## 11 Investigations

(1) An investigation for the purposes of a provision of an Act (or an instrument under an Act) that was started by the Privacy Commissioner before the commencement day may be completed by the Information Commissioner in accordance with that provision on or after the commencement day.

(2) Subitem (1) applies whether the investigation was initiated by a complaint or at the initiative of the Privacy Commissioner.

## 12 Requirement to give evidence or hold conference etc.

(1) Subitem (2) applies if:

(a) the Privacy Commissioner required a person to provide evidence, information or any document; and

(b) the evidence, information or document was not provided to the Privacy Commissioner before the commencement day.

(2) The person must provide the evidence, information or document to the Information Commissioner, on the same basis on which it was required to be provided to the Privacy Commissioner.

(3) Subitem (4) applies if:

(a) the Privacy Commissioner directed a person to attend a conference under section 46 of the *Privacy Act 1988*; and

(b) the conference was not held before the commencement day.

(4) The person must attend the conference if the conference is:

(a) presided over by the Information Commissioner; and

(b) held on or after the commencement day; and

(c) held in accordance with section 46 of the *Privacy Act 1988*.

## 13 Applications on foot as part of investigation proceeding

(1) This item applies if:

(a) an application was made to the Privacy Commissioner as part of an investigation under section 38A or 38B of the *Privacy Act 1988* (as in force before the commencement day); and

(b) the Privacy Commissioner did not determine the application before the commencement day.

(2) The Information Commissioner may determine the application in accordance with the provision in accordance with which the application was made on or after the commencement day.

## 14 Conference convened, but not held

(1) This item applies if:

(a) the Privacy Commissioner convened a conference in accordance with section 47 of the *Privacy Act 1988*; and

(b) the conference was not held before the commencement day.

(2) The Information Commissioner may hold the conference in accordance with section 47 of the *Privacy Act 1988* on or after the commencement day.

## 15 Submissions invited, but not received, by Privacy Commissioner

(1) This item applies if:

(a) the Privacy Commissioner, under subsection 43(5) or 53B(3) of the *Privacy Act 1988*, afforded a complainant or respondent an opportunity to appear before the Commissioner and make submissions, orally, in writing or both, in relation to a matter to which an investigation relates; and

(b) the submissions were not made before the commencement day.

(2) The Information Commissioner may, in accordance with the subsection, receive the submissions on or after the commencement day.

# Part 5—Written instruments and reporting requirements

## 16 References in instruments

(1) This item applies if:

(a) an instrument is in force immediately before the commencement day; and

(b) the instrument contains a reference to the Privacy Commissioner.

(2) The instrument has effect on and after the commencement day as if the reference to the Privacy Commissioner were a reference to the Information Commissioner.

(3) The Minister may, by written instrument, determine that subitem (1) does not apply in relation to a specified reference.

(4) A determination under subitem (3) is not a legislative instrument.

## 17 Reporting requirements

*Reports for periods ending after the commencement day*

(1) Subitem (2) applies if:

(a) immediately before the commencement day, a law required the Privacy Commissioner to provide a report in relation to a period; and

(b) the period ends on or after the commencement day.

(2) The Information Commissioner must provide the report, as required, in relation to so much of the period as occurs before the commencement day.

*Reports for periods ending before the commencement day*

(3) Subitem (4) applies if:

(a) a law required the Privacy Commissioner to provide a report in relation to a period that ended before the commencement day; and

(b) the report was not provided before the commencement day.

(4) The Information Commissioner must provide the report as required.

## Part 6—Legal and other proceedings

### 18 Substitution of Information Commissioner as a party to pending proceedings

If any proceedings to which the Privacy Commissioner was a party were pending in any court or tribunal immediately before the commencement day, the Information Commissioner is substituted for the Privacy Commissioner as a party to the proceedings on and after the commencement day.

### 19 Reviews, examinations etc. by Privacy Commissioner

(1) This item applies if the Privacy Commissioner was doing any of the following things under the *Privacy Act 1988* (but had not finished doing that thing) before the commencement day:

(a) conducting a review of an approved privacy code under section 18BH;

(b) examining proposed enactments in accordance with the function set out in paragraph 27(1)(b);

(c) undertaking a conciliation process for the purposes of paragraph 28A(1)(b);

(d) undertaking research and monitoring developments in accordance with the function set out in paragraph 27(1)(c);

(e) examining records for the purposes of subsection 27(3);

(f) examining records for the purposes of paragraph 28(1)(d).

(2) The Information Commissioner may finish doing the thing in accordance with the provision on and after the commencement day.

### 20 Review of adjudicator's decisions

(1) This item applies if:

(a) a person applied under section 18BI of the *Privacy Act 1988* to the Privacy Commissioner for review of a determination made by an adjudicator; and

(b) the Privacy Commissioner did not complete the review before the commencement day.

(2) The Information Commissioner may complete the review in accordance with section 18BI of the *Privacy Act 1988* on and after the commencement day.

## 21 Conference convened, but not held

(1) This item applies if:

(a) the Privacy Commissioner convened a conference in accordance with section 76 of the *Privacy Act 1988*; and

(b) the conference was not held before the commencement day.

(2) The Information Commissioner may hold the conference in accordance with sections 76 and 77 of the *Privacy Act 1988* on or after the commencement day.

## 22 Conference held, but determination not made, by Privacy Commissioner

(1) This item applies if:

(a) the Privacy Commissioner held a conference in accordance with section 76 of the *Privacy Act 1988*; and

(b) before the commencement day, the Privacy Commissioner did not make a determination in accordance with section 79 of that Act in relation to the matters raised at the conference.

(2) The Information Commissioner may make a determination in relation to those matters in accordance with section 79 of the *Privacy Act 1988* on or after the commencement day.

## Part 7—Miscellaneous

### 23 Records etc. of Office of the Privacy Commissioner

All records or documents held, immediately before the commencement day, for the purposes of the performance of the functions, or the exercise of the powers, of the Privacy Commissioner, are, on and after the commencement day, taken to be held for the purposes of the performance of the functions, or the exercise of the powers, of the Information Commissioner.

### 24 Disclosure of private information

Despite the repeal of section 96 of the *Privacy Act 1988* by this Act, that section (as in force immediately before the commencement day) continues to apply, in relation to conduct engaged in before the commencement day, as if that section had not been repealed.

### 25 Failure to appear before, or give information to, the Privacy Commissioner

(1) Subitem (2) applies if:

(a) section 65 or 66 of the *Privacy Act 1988* applied to a person before the commencement day in relation to conduct engaged in by the person; and

(b) that provision would not (but for this item) apply to the person on or after the commencement day.

(2) That section applies to the person in relation to the conduct on and after the commencement day.

### 26 Saving of existing delegations

A delegation in force under section 99 of the *Privacy Act 1988* immediately before the commencement day continues to have effect, subject to the new law, as if it were a delegation under section 25 of the new law on and after the commencement day.

### 27 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Schedule to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

(2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

[*Minister's second reading speech made in—*
*House of Representatives on 26 November 2009*
*Senate on 13 May 2010*]