

# AUSTRALIAN CAPITAL TERRITORY

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## Freedom of Information Ordinance 1989

No. 46 of 1989

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# AUSTRALIAN CAPITAL TERRITORY

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## Freedom of Information Ordinance 1989

No. 46 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

CLYDE HOLDING  
Minister of State for the Arts  
and Territories

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An Ordinance to give members of the public rights of access to official documents of the Territory

## **PART I—PRELIMINARY**

### **Short title**

**1.** This Ordinance may be cited as the *Freedom of Information Ordinance 1989*.<sup>1</sup>

### **Commencement**

**2.** This Ordinance commences on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

### **Object**

**3. (1)** The object of this Ordinance is to extend as far as possible the right of the Australian community and, in particular, the citizens of the Territory, to access to information in the possession of the Territory by—

- (a) making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices; and
- (b) creating a general right of access to information in documentary form in the possession of Ministers and agencies, limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.

**(2)** The provisions of this Ordinance shall be interpreted so as to further the objects set out in subsection (1) and to ensure that discretions conferred by this Ordinance are exercised as far as possible to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

### **Interpretation**

**4. (1)** In this Ordinance, unless the contrary intention appears—

“agency” means a Department or a prescribed authority;

“applicant” means a person who has made a request;

“Australian Archives” means the Australian Archives established under the *Archives Act 1983* of the Commonwealth;

“Commonwealth agency” means a body that is an agency for the purposes of the *Freedom of Information Act 1982* of the Commonwealth;

“Department” means an administrative unit of the Public Service;

“document”, in relation to an agency, means a document in the possession of the agency, whether created in the agency or received in the agency;

“enactment” means an Act or a subordinate law (including part of an Act or of such a law);

“exempt document” means—

- (a) a document which, under Part IV, is an exempt document;
- (b) a document in respect of which an agency is exempt from the operation of this Ordinance under section 6; or
- (c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency;

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

“officer”, in relation to an agency, includes a member of, or a member of the staff of, the agency;

“official document”, in relation to a Minister, means a document that is in the possession of the Minister in the Minister’s capacity as a Minister, being a document that relates to the affairs of an agency, and includes a document that has passed from the Minister’s possession if the Minister is entitled to access to the document and the document is not a document of an agency;

“Ombudsman” means the Australian Capital Territory Ombudsman;

“prescribed authority” means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than—
  - (i) an incorporated company or association;
  - (ii) a body that, under subsection (2) or the regulations, is not a prescribed authority for the purposes of this Ordinance; or
  - (iii) an enquiry under the *Evidence Ordinance 1938*;

- (b) any other body, whether incorporated or unincorporated, that is declared by the regulations to be a prescribed authority for the purposes of this Ordinance, being—
  - (i) a body established by the Executive or by a Minister; or
  - (ii) an incorporated company or association over which the Territory is in a position to exercise control;
- (c) subject to subsection (3), the person holding, or performing the duties of, an office established by an enactment; or
- (d) a person holding, or performing the duties of, an office declared by the regulations to be an office the holder of which is a prescribed authority for the purposes of this Ordinance, being an office created by the Executive or by a Minister otherwise than under an enactment;

“principal officer” means—

- (a) in relation to a Department—the Head of Administration or, if an Associate Head of Administration has been placed in control of that Department, that Associate Head of Administration or a person acting in such an office; or
- (b) in relation to a prescribed authority—
  - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
  - (ii) in any other case—the person who constitutes that authority or a person acting in his or her office or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which the person is present or a person acting in his or her office;

“request” means an application made in accordance with subsection 14 (1);

“responsible Minister”, in relation to an agency, means—

- (a) subject to paragraphs (b) and (c), the Minister who is responsible for that agency;

- (b) in relation to a prescribed authority referred to in paragraph (c) of the definition of “prescribed authority”—the Minister administering the enactment concerned; or
- (c) in relation to a prescribed authority referred to in paragraph (b) or (d) of the definition of “prescribed authority”—the Minister declared by the regulations to be the responsible Minister in respect of that authority;

or another Minister acting for and on behalf of that Minister;

“State” includes the Northern Territory;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal.

**(2)** An unincorporated body, being a board, council, committee, subcommittee or other body established by or under an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purposes of this Ordinance, but shall be taken to be comprised within that prescribed authority.

**(3)** A person shall not be taken to be a prescribed authority only because the person holds or performs the duties of—

- (a) a prescribed office;
- (b) an office the duties of which the person performs as duties of his or her employment as an officer of an agency;
- (c) an office of member of a body; or
- (d) an office established by an enactment for the purposes of a prescribed authority.

**(4)** Where an agency is abolished—

- (a) if the functions of the agency are acquired by another agency—any request made to the first-mentioned agency shall be taken to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be taken to have been made by, the other agency;
- (b) if the functions of the agency are acquired by more than 1 other agency—any request made to the first-mentioned agency shall be taken to have been made to, and any decision made by the first-mentioned agency in respect of a request made to it shall be taken to

have been made by, whichever of those other agencies has acquired the functions of the first-mentioned agency to which the document the subject of the request most closely relates; and

- (c) if the documents of the agency are held by the Australian Archives on behalf of the Territory—any request made to the agency shall be taken to have been made to, and any decision made by the agency in respect of a request made by it shall be taken to have been made by, the agency to the functions of which the document the subject of the request most closely relates.

(5) If the agency to which a request is so taken to have been made, or by which a decision upon request is so taken to have been made, was not itself in existence at the time when the request or decision was taken so to have been made, then, for the purposes only of dealing with that request or decision under this Ordinance, that agency shall be taken to have been in existence at that time.

(6) For the purposes of this Ordinance, where the Minister has, by notice in the *Gazette*, declared that an application fee is applicable in respect of an application under subsection 14 (1) or 59 (1), there shall be taken to be an application fee in respect of the application.

(7) Where a person has nominated an address in Australia at which documents may be served on the person, a document or statement that is required by this Ordinance to be given to the person may be sent to that address.

#### **Ordinance to apply to certain tribunals in respect of administrative matters**

5. The regulations may specify that—

- (a) each tribunal, authority or body identified in the regulations is to be taken to be a prescribed authority;
- (b) the holder of an office pertaining to a tribunal, authority or body identified in the regulations, being an office established by the enactment establishing the tribunal, authority or body, is not, in his or her capacity as the holder of that office, to be taken to be a prescribed authority or to be included in a Department; or
- (c) a registry or other office of or under the charge of a tribunal, authority or body declared by the regulations to be a prescribed authority, and the staff of such a registry or other office when acting in a capacity as

members of that staff, shall be taken to be part of the tribunal, authority or body;

but this Ordinance does not apply to any request for access to a document of a tribunal, authority or body so identified unless the document relates to matters of an administrative nature.

### **Exemption of certain bodies**

6. The regulations may specify that—
  - (a) bodies identified in the regulations, or persons holding and performing the duties of offices so identified, are not prescribed authorities for the purposes of this Ordinance; or
  - (b) agencies identified in the regulations are exempt from the operation of this Ordinance in relation to the documents referred to in the regulations in relation to them.

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

### **Publication of information concerning functions and documents of agencies**

7. (1) The responsible Minister of an agency shall—
  - (a) cause to be published, as soon as practicable after the commencement of this Ordinance but not later than 12 months after that commencement, in a form approved by the Minister—
    - (i) a statement setting out particulars of the organisation and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions;
    - (ii) a statement setting out particulars of any arrangements that exist for bodies or persons outside the Executive or agencies to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency of any enactment or scheme;
    - (iii) a statement of the categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such

documents, if any, as are referred to in subsection 11 (1) and categories of other documents, if any, as are customarily made available to the public, otherwise than under this Ordinance, free of charge upon request;

(iv) a statement of particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency; and

(v) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer to whom, and the place at which, initial inquiries concerning access to documents may be directed; and

(b) during the year commencing on 1 January next following the publication, in respect of the agency, of the statement under subparagraph (a) (i), (ii), (iii), (iv) or (v) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the statement previously published under that subparagraph.

(2) In approving a form under subsection (1), the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Ordinance.

(3) The information to be published in accordance with this section shall be published by including it—

(a) in the annual report of the agency; or

(b) if there is no such report—in the annual report to which the affairs of the agency relate.

(4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

(5) Subsection (1) applies in relation to an agency that comes into existence after the commencement of this Ordinance as if the references in that subsection to the commencement of this Ordinance were references to the day on which the agency comes into existence.

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

**8. (1)** This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being—

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the Territory administration;
- (b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Ordinance;
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme; or
- (d) documents describing the procedures to be followed in investigating breaches or evasions or possible breaches or evasions of such an enactment or of the law relating to such a scheme;

but not including documents that are available to the public as published otherwise than by an agency or as published by another agency.

**(2)** The principal officer of an agency shall—

- (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) cause to be prepared, within 12 months after the commencement of this Ordinance, and as soon as practicable after preparation to be made available, for inspection and for purchase by members of the public, a statement (which may take the form of an index) specifying the documents copies of which are, at the time of preparation of the statement, available in accordance with paragraph (a) and the place or places where copies may be inspected and may be purchased; and
- (c) cause to be prepared, if possible within 3 months, and in any case not later than 12 months, after the preparation of the last preceding statement prepared in accordance with paragraph (b) or this paragraph, and as soon as practicable after the preparation to be made available, for inspection and for purchase by members of the public, a

statement bringing up to date the information contained in that last preceding statement.

(3) The principal officer is not required to comply fully with paragraph (2) (a) within the period of 12 months after the commencement of this Ordinance, but shall, within that period, comply with that paragraph as far as is practicable.

(4) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) The report of the Minister under section 79 in respect of a year shall include a statement concerning compliance by agencies with the requirements of this section during that year.

(6) Where a person makes a request to inspect or to purchase a document of an agency concerning a particular enactment or scheme, being a document of a kind to which this section applies, the principal officer of the agency shall take all reasonable steps to ensure that the attention of that person is drawn to any document of the agency concerning that enactment or scheme that is relevant to the request and has become a document to which this section applies since the last occasion on which a statement in respect of documents of the agency was prepared and made available in accordance with subsection (2).

(7) Subsection (3) applies in relation to an agency that comes into existence after the commencement of this Ordinance as if the reference in that subsection to the commencement of this Ordinance were a reference to the day on which the agency comes into existence.

### **Unpublished documents not to prejudice public**

9. (1) If a document required to be made available in accordance with section 8, being a document containing a rule, guideline or practice relating to a function of an agency was not made available as referred to in that section, before the time at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to the person (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), the person, if he or she was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice only because of the application of that rule, guideline or practice in relation to the

thing done or omitted to be done by the person if he or she could lawfully have avoided that prejudice had he or she been aware of that rule, guideline or practice.

(2) The reference in subsection (1) to the time at which a person did, or omitted to do, any act or thing relevant to the performance in relation to the person of a function of an agency does not include a reference to a time earlier than—

- (a) the end of the period of 12 months referred to in paragraph 8 (2) (b); or
- (b) the end of the period of 12 months after the day on which the agency came into existence;

whichever is the later.

### **PART III—ACCESS TO DOCUMENTS**

#### **Right of access**

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

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

#### **Part not to apply to certain documents**

11. (1) A person is not entitled to obtain access under this Part to—

- (a) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge;
- (b) a document that is available for purchase by the public in accordance with arrangements made by an agency; or
- (c) library material maintained for reference purposes.

(2) A person is not entitled to obtain access under this Part to a document or a part of a document that became a document of a Commonwealth agency or an official document of a Commonwealth Minister before 1 January 1977 unless—

- (a) the document or that part of the document contains information relating to the personal affairs of that person; or

- (b) the document or that part of the document is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which that person has lawfully had access.
- (3) Regulations may be made modifying subsection (2) so as to enable a person to obtain access under this Part to documents to which, but for the making of those regulations, the person would not be entitled to access because of that subsection.
- (4) References in subsection (3) to subsection (2) include references to subsection (2) as previously modified under regulations made under subsection (3).

#### **Documents in Australian Archives**

**12. (1)** For the purposes of this Ordinance, a document that has been placed in the custody of the Australian Archives by an agency shall be taken to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

- (2) For the purposes of this Ordinance, a document that:
  - (a) becomes the property of the Territory by virtue of section 5 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth; and
  - (b) before the commencement of this Ordinance, was placed in the custody of the Australian Archives;

shall be taken to be in the possession of the agency to the functions of which the document is most closely related.

#### **Access to documents apart from Ordinance**

**13.** Nothing in this Ordinance is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents) otherwise than as required by this Ordinance where they can properly do so or are required by law to do so.

#### **Requests for access**

**14. (1)** A person who wishes to obtain access to a document of an agency or an official document of a Minister may, by application in writing to the agency or Minister accompanied by any application fee in respect of the application, request access to the document.

(2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

(3) Where a person—

- (a) wishes to make a request to an agency; or
- (b) has made a request to an agency that does not comply with this section;

it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.

(4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

#### **Transfer of requests**

15. (1) Where a request is made to an agency for access to a document and—

- (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
- (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made;

the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

(2) Where a request is made to an agency for access to a document that—

- (a) originated with, or has been received from, a body to which, or a person to whom, regulations made for the purposes of paragraph 6 (a) apply; and
- (b) is more closely connected with the functions of that body or person than with those of the agency to which the request is made;

the request shall be transferred to the Department corresponding to the Department for which the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed is responsible.

- (3) Where a request is made to an agency for access to a document that—
- (a) originated in, or has been received from, another agency, being an agency to which the regulations made for the purposes of paragraph 6 (b) apply; and
  - (b) is more closely connected with the functions of the other agency in relation to documents in respect of which the other agency is exempt from the operation of this Ordinance than with the functions of the agency to which the request is made;

the agency to which the request is made shall transfer the request to the other agency.

(4) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.

(5) Where a request is transferred to an agency in accordance with this section, it shall be taken to be a request made to that agency and received at the time at which it was originally received.

(6) In this section, “agency” includes a Minister.

#### **Requests involving use of computers etc.**

16. (1) Where—

- (a) a request (including a request of the kind described in subsection 23 (1)) is made in accordance with the requirements of subsection 14 (2) to an agency or to a Minister;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency or in official documents of the Minister, as the case may be; and
- (c) the agency or the Minister, as the case may be, could produce a written document containing the information in discrete form by—
  - (i) the use of a computer or other equipment that is ordinarily available to the agency or ordinarily available in an office of the Minister, as the case may be, for retrieving or collating stored information; or

- (ii) the making of a transcript from a sound recording held in the agency or in an office of the Minister, as the case may be;

the agency or the Minister, as the case may be, shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Ordinance applies as if the agency or the Minister, as the case may be, were in possession of such a document.

(2) An agency or a Minister is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency, or of an office of the Minister, as the case may be, from its other operations.

#### **Access to documents to be given on request**

17. (1) Subject to this Ordinance, where—

- (a) a request is made in accordance with subsection 14 (2) by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and
- (b) any charge that, under a determination in force under section 80, is required to be paid before access is granted has been paid;

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

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

#### **Time within which requests to be decided**

18. (1) If a request for access to a document that is made to an agency or Minister—

- (a) is expressed to be made under this Ordinance; and
- (b) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at the appropriate address of the agency or the Minister;

the agency or Minister shall take all reasonable steps to ensure that—

- (c) the applicant is notified of the day on which the request was received by or on behalf of the agency or Minister as soon as practicable but in any case not later than 14 days after the day on which it was so received; and

- (d) the applicant is notified of a decision on the request (including a decision under section 20 to defer the provision of access to a document) as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.

(2) In subsection (1), “appropriate address”, in relation to an agency or a Minister, means an address of that agency or of that Minister that is specified in a notice (being a notice that is in force at the time of the request) published in the *Gazette* by the responsible Minister of the agency or by the Minister, as the case may be, as an address to which requests made under this Ordinance may be sent or delivered in accordance with this section.

(3) Where—

- (a) a request has been made to an agency or to a Minister for access to a document; and
- (b) that agency or that Minister, as the case may be, determines in writing that the requirements of section 26 or 27 make it appropriate to extend the period of 30 days referred to in subsection (1);

that period in relation to that request shall be extended by 15 days.

(4) Where an agency or a Minister makes a determination in writing under subsection (3) in relation to a request, that agency or Minister shall, as soon as possible, inform the applicant of the extension.

### **Forms of access**

**19. (1)** Access to a document may be given to a person in 1 or more of the following forms:

- (a) a reasonable opportunity to inspect the document;
- (b) provision of a copy of the document;
- (c) if the document is an article or thing from which sounds or visual images are capable of being reproduced—the making of arrangements for the person to hear or view those sounds or visual images;
- (d) if the document is one by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form—provision of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 21, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the giving of access in the form requested by the applicant—

- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions;
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would, but for this Ordinance, involve an infringement of copyright (other than copyright owned by the Territory or an agency) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency;

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

(4) Subject to subsection 16 (1), where a person requests access to a document in a particular form and, for a reason specified in subsection (3), access in that form is refused but access is given in another form, the applicant shall not be required to pay a charge in respect of the provision of access to the document that is greater than the charge that the applicant would have been required to pay if access had been given in the form requested.

#### **Deferment of access**

**20. (1)** An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned—

- (a) if the publication of the document concerned is required by law—until the end of the period within which the document is required to be published;
- (b) if the document concerned has been prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the end of a reasonable period after its preparation for it to be so presented or made available;
- (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the end of any period of time beyond which the release of the document would not be contrary to the public interest; or

- (d) if a Minister considers that the document concerned is of such general public interest that the Legislative Assembly should be informed of the contents of the document before the document is otherwise made public—until the end of 5 sitting days of the Legislative Assembly after the Legislative Assembly is so informed.

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

(3) Subsection 60 (1) does not apply in relation to a deferment under paragraph (1) (d) of this section.

### **Deletion of exempt matter**

**21. (1)** Where—

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, because of the deletions, be misleading; and
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

(2) Where access is granted to a copy of a document in accordance with subsection (1)—

- (a) the applicant shall be informed—
  - (i) that it is such a copy; and
  - (ii) of the provision of this Ordinance by virtue of which any matter deleted is exempt matter; and
- (b) section 25 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant

requests the agency or Minister to give to the applicant a notice in writing in accordance with that section.

### **Decisions to be made by authorised persons**

**22.** A decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by the officer in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

### **Requests may be refused in certain cases**

**23. (1)** Where—

- (a) a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter; and
- (b) the agency or Minister dealing with the request is satisfied that, apart from this subsection, the work involved in giving access to all the documents to which the request relates would substantially and unreasonably divert the resources of the agency from its other operations or would interfere substantially and unreasonably with the performance by the Minister of his or her functions, as the case may be, having regard to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or of the office of the Minister;

the agency or Minister may refuse to grant access to the documents in accordance with the request without having caused those processes to be undertaken.

**(2)** Where, in respect of a request of a kind referred to in paragraph (1) (a), it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents and that no obligation would arise under section 21 in relation to any of those documents to grant access to a copy of the document with deletions, the agency or Minister may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision of this Ordinance under which that document is claimed to be an exempt document.

**(3)** An agency or Minister shall not refuse to grant access to a document in accordance with a request—

- (a) on the ground that the request does not comply with subsection 14 (2);  
or
- (b) in accordance with subsection (1);

without first giving the applicant a reasonable opportunity of consultation with a view to the making of the request in a form that would remove the ground for refusal.

### **Information as to existence of certain documents**

**24. (1)** Nothing in this Ordinance shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where that information, if included in a document of an agency, would cause the last-mentioned document to be an exempt document under section 34 or subsection 37 (1).

**(2)** Where a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister, as the case may be, neither confirms nor denies the existence, as a document of the agency, of such a document but that, assuming the existence of such a document, it would be an exempt document under section 34 or subsection 37 (1) and, where such a notice is given—

- (a) section 25 applies as if the decision to give such a notice were a decision referred to in that section; and
- (b) the decision shall, for the purposes of Part VII, be taken to be a decision refusing to grant access to the document in accordance with the request for the reason that the document would, if it existed, be an exempt document under section 34 or subsection 37 (1).

### **Reasons and other particulars of decisions to be given**

**25. (1)** Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision—

- (a) stating the findings on any material questions of fact, referring to the material on which those findings were based, and stating the reasons for the decision;

- (b) where the decision relates to a document of an agency—stating the name and the designation of the person giving the decision; and
- (c) giving to the applicant appropriate information concerning—
  - (i) his or her rights with respect to review of the decision;
  - (ii) his or her rights to make a complaint to the Ombudsman in relation to the decision; and
  - (iii) the procedure for the exercise of those rights;including (where applicable) particulars of the manner in which an application for review under section 59 may be made.

(2) Section 13 of the *Administrative Decisions (Judicial Review) Ordinance 1989* does not apply to a decision referred to in subsection (1).

(3) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

**Procedure on request in respect of documents likely to affect relations between the Territory and the Commonwealth or a State**

26. (1) Where arrangements have been entered into between the Territory and the Commonwealth or the Territory and a State with regard to consultation under this section and it appears that—

- (a) a document that is the subject of a request originated with, or was received from, or contains information that originated with, or was received from, the Commonwealth or the State or an authority of the Commonwealth or the State; and
- (b) the Commonwealth or the State may reasonably wish to contend that the document is an exempt document under section 34;

a decision to grant access to the document shall not be made by the agency or Minister concerned unless consultation has taken place between the Territory and the Commonwealth or the Territory and the State in accordance with those arrangements.

(2) Where, after consultation between the Territory and the Commonwealth or the Territory and a State as mentioned in subsection (1) in relation to a document, a decision is made that the document is not an exempt document under section 34 or under any other provision of this Ordinance—

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

**Procedure on request in respect of document relating to business affairs etc.**

**27. (1)** Where—

- (a) a request is received by an agency or Minister in respect of a document containing information concerning a person in respect of the person's business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking; and
- (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 59 a decision refusing the request, that the person or organisation, or the proprietor of the undertaking, referred to in paragraph (a) might reasonably wish to contend that the document is an exempt document under section 43;

a decision to grant access under this Ordinance to the document, so far as it contains the information referred to in paragraph (a), shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 18—

- (c) the agency or Minister has given to that person or organisation or the proprietor of that undertaking a reasonable opportunity of making

submissions in support of a contention that the document is an exempt document under section 43; and

- (d) the person making the decision has had regard to any submissions so made.

(2) Where, after any submissions have been made in accordance with subsection (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1) (a), is not an exempt document under section 43—

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

**Persons to be notified of liability to pay charges**

28. Where, in accordance with a determination in force under section 80, an agency or Minister makes a decision that an applicant is liable to pay a charge (not being an application fee) in respect of a request for access to a document or in respect of the provision of access to a document, the agency or Minister shall notify the applicant, in writing, accordingly, and shall give to the applicant, together with that notification, a statement setting out the basis on which the amount of that charge is calculated.

**Charge may be remitted**

29. (1) An applicant may make application, in writing, to the agency to which or the Minister to whom the applicant made a request seeking the total or partial remission of any charge paid by the applicant, or notified as being a charge that the applicant is liable to pay, in respect of that request or in respect of the provision of access to a document to which the request relates.

(2) Where an application is made under subsection (1), the agency or Minister—

- (a) may remit the charge to which the application relates in whole or in part; and
  - (b) shall take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 28 days after the day on which the application was received by or on behalf of the agency or Minister.
- (3) Without limiting the matters which the agency or Minister may take into account for the purpose of determining whether or not to remit a charge under subsection (2), the agency or Minister shall take into account—
- (a) whether the payment of the charge or of any part of the charge would cause or has caused financial hardship to the applicant or to a person on whose behalf the application was made;
  - (b) whether the document to which the applicant seeks access relates to the personal affairs of the applicant or a person on whose behalf the application was made; and
  - (c) whether the giving of access is in the general public interest or in the interest of a substantial section of the public.
- (4) Where—
- (a) an application has been made to an agency or Minister under subsection (1); and
  - (b) notice of a decision on the application has not been received by the applicant within the period of 28 days commencing on the day on which the application was received by or on behalf of the agency or Minister;

the principal officer of the agency, or the Minister, as the case requires, shall be taken to have made, on the last day of that period, a decision refusing to make the total or partial remission of the charge to which the application relates that was sought in that application.

(5) In this section, “charge” means a charge that an applicant is notified under section 28 that the applicant is liable to pay in respect of a request for access to a document or in respect of the provision of access to a document.

### **Remission of application fees**

#### **30. (1) Where—**

- (a) there is an application fee in respect of an application to an agency or Minister under subsection 14 (1) requesting access to a document or under subsection 59 (1) requesting a review of a decision relating to a document (whether or not the fee has been paid); and
- (b) the agency or Minister is satisfied that—
  - (i) the payment of the fee or of a part of the fee would cause or has caused financial hardship to the applicant or to a person on whose behalf the application was made;
  - (ii) the document relates to the personal affairs of the applicant or to a person on whose behalf the application was made; or
  - (iii) the giving of access is in the general public interest or in the interest of a substantial section of the public;

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

**(2)** Where the whole or part of an application fee is remitted under subsection (1), then, to the extent of the remission, there shall not, for the purposes of subsection 14 (1) or 59 (1), as the case may be, be taken to be an application fee in respect of the application.

**Period under section 18 to be extended in certain cases**

**31. (1)** Where an applicant receives a notification under section 28 before the end of 30 days after the day on which the request was received by or on behalf of an agency or a Minister, being a notification that the applicant is liable to pay a specified charge in respect of that request, section 18 applies to the request as if the period of 30 days referred to in subsection 18 (1) were extended by the period commencing on the day on which that notification is received by the applicant and ending on the day that is, under subsection (2), the relevant day in relation to that request.

**(2)** For the purposes of subsection (1), the relevant day in relation to a request made by an applicant to whom a notification has been given under section 28 setting out the applicant's liability to pay a specified charge is—

- (a) if the applicant pays the charge, or such deposit on account of the charge as the applicant is required to pay under a determination in force under section 80 (whether or not the applicant first seeks a remission of the charge under section 29 or a review of the decision in respect of the charge under section 60)—the day on which that charge or deposit is so paid;

- (b) if the applicant, not having paid the charge or deposit referred to in paragraph (a), makes an application under section 29 for the total or partial remission of the charge—
  - (i) if a decision is made upon that application to remit the whole of the charge—the day on which the applicant is notified under that section of that decision; or
  - (ii) if a decision is made on that application to remit part of the charge—the day on which the applicant pays the charge as so remitted or such deposit on account of the charge as so remitted as the applicant is required to pay under a determination in force under section 80; or
- (c) if the applicant, not having paid the charge or deposit referred to in paragraph (a), makes an application to the Tribunal under section 60 for a review of the decision referred to in section 28—
  - (i) if a decision is made by the Tribunal setting aside the decision referred to in section 28—the day on which the applicant is notified by the Tribunal of that decision; or
  - (ii) if the Tribunal sets aside the decision referred to in section 28 and makes another decision in substitution for that decision—the day on which the applicant pays the charge specified in the substituted decision or such deposit on account of that charge as the applicant is required to pay under a determination in force under section 80.

#### **PART IV—EXEMPT DOCUMENTS**

##### **Interpretation**

**32.** A provision of this Part under which documents referred to in the provision are exempt documents—

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

**Documents exempt under Commonwealth Act**

**33. (1)** Where—

- (a) a request is made to an agency or a Minister for access to a document;
- (b) the principal officer of the agency, or the Minister, has reasonable grounds to believe that the document would, if it were in the possession of a Commonwealth agency, be an exempt document under section 33, 33A, 34, 35, 39, 44 or 47 of the *Freedom of Information Act 1982* of the Commonwealth;

the document is an exempt document and the principal officer or the Minister shall transfer the request to the Commonwealth agency whose functions are most closely related to the subject of the request and send the document to that agency.

**(2)** Where a document is so transferred, the principal officer shall notify the applicant of the transfer.

**Documents affecting relations with Commonwealth and States**

**34. (1)** Subject to subsection (5), a document is an exempt document if disclosure of the document under this Ordinance—

- (a) would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Commonwealth, a State or an authority of the Commonwealth or of a State to the Territory, to a Territory authority or to a person receiving the communication on behalf of the Territory or of a Territory authority.

**(2)** Where a Minister is satisfied that a document is an exempt document for a reason referred to in subsection (1), the Minister may sign a certificate to that effect specifying that reason and, subject to Part VII, such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document.

**(3)** Where a Minister is satisfied as mentioned in subsection (2) only because of matter contained in a particular part of a document, a certificate under that subsection in respect of the document shall identify that part of the document as containing that matter.

(4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the last-mentioned document to be an exempt document under this section because of a reason referred to in subsection (1), the Minister may sign a certificate to that effect, specifying that reason.

(5) This section does not apply to a document in respect of matter in a document the disclosure of which under this Ordinance would, on balance, be in the public interest.

(6) The responsible Minister of an agency may, by signed instrument, delegate to the principal officer of the agency the Minister's powers under this section in respect of documents of the agency.

### **Executive documents**

**35. (1)** A document is an exempt document if it is—

- (a) a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive;
- (b) an official record of the Executive;
- (c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.

(2) This section does not apply to a document (in this subsection called a “relevant document”)—

- (a) that is referred to in paragraph (1) (a); or
- (b) that is referred to in paragraph (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in paragraph (1) (a);

to the extent that the relevant document contains purely factual material unless—

- (c) the disclosure under this Ordinance of that document would involve the disclosure of any deliberation or decision of the Executive; and

- (d) the fact of that deliberation or decision has not been officially published.

(3) For the purposes of this Ordinance, a certificate signed by the Head of Administration certifying that a document is of a kind referred to in a paragraph of subsection (1) establishes conclusively, subject to Part VII, that it is an exempt document of that kind.

(4) Where a document is a document referred to in paragraph (1) (c) or (d) only because of matter contained in a particular part of the document, a certificate under subsection (3) in respect of the document shall identify that part of the document as containing that matter.

(5) For the purposes of this Ordinance, a certificate signed by the Head of Administration certifying that a document as described in a request would, if it existed, be of a kind referred to in a paragraph of subsection (1) establishes conclusively, subject to Part VII, that, if such a document exists, it is an exempt document of that kind.

(6) Where a certificate under subsection (5) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of subsection (1) that is specified in the certificate.

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

### **Internal working documents**

**36. (1)** Subject to this section, a document is an exempt document if its disclosure under this Ordinance—

- (a) would disclose 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 Territory; and
- (b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in subsection 8 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in subsection 8 (1).

(3) Where a Minister is satisfied, in relation to a document to which paragraph (1) (a) applies, that the disclosure of the document would be contrary to the public interest, the Minister may sign a certificate to that effect, specifying the ground of public interest in relation to which the certificate is given and, subject to Part VII, such a certificate, so long as it remains in force, establishes conclusively that the disclosure of that document would be contrary to the public interest.

(4) Where a Minister is satisfied as mentioned in subsection (3) only because of matter contained in a particular part of a document, a certificate under that subsection in respect of the document shall identify that part of the document as containing that matter.

(5) This section does not apply to a document only because of purely factual material contained in the document.

(6) This section does not apply to—

- (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 prescribed body or organisation established within an agency; or
- (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.

(7) Where a decision is made under Part III that an applicant is not entitled to access to a document because of this section, the notice under section 25 shall state the ground of public interest on which the decision is based.

(8) The responsible Minister of an agency may, by signed instrument, delegate to the principal officer of the agency the Minister's powers under this section in respect of documents of the agency.

### **Documents affecting enforcement of the law and protection of public safety**

37. (1) A document is an exempt document if its disclosure under this Ordinance would, or could reasonably be expected to—

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

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

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Ordinance would, or could reasonably be expected to—

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or could reasonably be expected to, prejudice the effectiveness of those methods or procedures; or

(c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(3) In subsections (1) and (2), “law” means a law in force in Australia.

### **Documents to which secrecy provisions of enactments apply**

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

### **Documents affecting financial or property interests of the Territory**

**39. (1)** Subject to subsection (2), a document is an exempt document if its disclosure under this Ordinance would have a substantial adverse effect on the financial or property interests of the Territory or of an agency.

(2) This section does not apply to a document the disclosure of matter in which under this Ordinance would, on balance, be in the public interest.

### **Documents concerning certain operations of agencies**

**40. (1)** Subject to subsection (2), a document is an exempt document if its disclosure under this Ordinance would, or could reasonably be expected to—

(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 Territory or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or
- (e) have a substantial adverse effect on the conduct by or on behalf of the Territory or an agency of industrial relations.

(2) This section does not apply to a document the disclosure of matter in which under this Ordinance would, on balance, be in the public interest.

### **Documents affecting personal privacy**

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

(2) Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.

(3) Where—

- (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 of a medical or psychiatric nature concerning the person making the request; 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 that person might be prejudicial to the physical or mental health or well-being of that person;

the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a medical practitioner to be nominated by that person.

### **Documents subject to legal professional privilege**

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

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

**Documents relating to business affairs etc.**

43. (1) A document is an exempt document if its disclosure under this Ordinance would disclose—

- (a) trade secrets;
- (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; or
- (c) information (other than trade secrets or information to which paragraph (b) applies) 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, being information—
  - (i) the disclosure of which 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
  - (ii) the disclosure of which under this Ordinance could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to a request by a person for access to a document—

- (a) only because of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs;
- (b) only because 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) only because 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 Territory, the Commonwealth, a State or by a local government authority.

### **Documents affecting economy**

44. (1) A document is an exempt document if its disclosure under this Ordinance would be contrary to the public interest because it—

- (a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government of the Territory to manage the economy of the Territory; or
- (b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or persons, by giving premature knowledge of or concerning proposed or possible action or inaction of the Government of the Territory or the Legislative Assembly.

(2) The kinds of documents to which subsection (1) may apply include, but are not limited to, documents containing matter relating to—

- (a) a fee or charge;
- (b) any kind of tax or duty;
- (c) proposals for expenditure; or
- (d) borrowings or proposals to borrow by the Territory or an agency.

### **Documents containing material obtained in confidence**

45. (1) A document is an exempt document if its disclosure under this Ordinance would constitute a breach of confidence.

(2) Subsection (1) does not apply to any document to the disclosure of which paragraph 36 (1) (a) applies or would, but for subsection 36 (2), (5) or (6), apply, being a document prepared by—

- (a) a Minister;
- (b) a member of the staff of a Minister or an officer of an agency in the course of his or her duties; or

- (c) a prescribed authority in the performance of its functions;

for purposes relating to the affairs of an agency or the official affairs of a Minister unless the disclosure would constitute a breach of confidence owed to a person or body other than—

- (d) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
- (e) an agency or the Territory.

**Documents disclosure of which would be contempt of Legislative Assembly or a court**

**46.** A document is an exempt document if public disclosure of the document would, apart from this Ordinance and any immunity of the Crown—

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Legislative Assembly, of the Commonwealth Parliament, of the Parliament of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

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

**47.** A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—

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

relating solely to the functions of the Commission in relation to the law of the Commonwealth or of a State.

## **PART V—AMENDMENT OF PERSONAL RECORDS**

### **Persons may make application for amendment of records**

**48.** Where a person (in this section called the “claimant”) who is an Australian citizen, or whose continued presence in Australia is not subject to any limitation as to time imposed by law, claims that a document of an agency or an official document of a Minister to which access has been provided to the claimant under this Ordinance contains information relating to the person’s personal affairs—

- (a) that is incomplete, incorrect, out of date or misleading; and
- (b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose;

the person may request the agency or Minister to amend the record of that information kept by the agency or Minister.

### **Form of request for amendment of records**

**49. (1)** A request under section 48—

- (a) shall be in writing and be expressed to be made under this Ordinance;
- (b) shall specify an address in Australia to which a notice under this Part may be sent to the claimant; and
- (c) shall be sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address that is an appropriate address of the agency or of the Minister, as the case may be, for the purposes of section 18.

**(2)** A request under section 48 shall—

- (a) give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister is incomplete, incorrect, out of date or misleading; and
- (b) specify the amendments that the claimant wishes to be made.

### **Procedure upon request for amendment of records**

**50. (1)** Where an agency to which or Minister to whom a request is made under section 48 decides to amend the record of information to which the

request relates, the agency or Minister may, in the discretion of the Minister or agency, make the amendment either by altering the record or by adding an appropriate notation to the record.

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

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

(3) Where a request is made to an agency or Minister under section 48, the agency or Minister shall take all reasonable steps to ensure that the claimant is notified of a decision on the request as soon as practicable but in any case not later than 30 days after the day on which the request is received by or on behalf of the agency or Minister.

(4) Section 22 applies to a decision in respect of a request made under section 48.

(5) Section 25 applies to a decision made under this Part refusing to amend a record in like manner as it applies to a decision made under Part III refusing to grant access to a document in accordance with a request made in accordance with subsection 14 (1).

### **Review of requests for amendments**

51. (1) A reference in Part VII to a request includes a reference to a request under section 48 but, for the purposes of the application of that Part to a request made under that section—

- (a) section 59 has effect as if all the words in subsection (1) of that section after “agency” (second occurring) and before “the applicant” (second occurring) were omitted;
- (b) the reference in paragraph 60 (1) (a) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record;
- (c) paragraph 61 (1) (a) has effect as if “in accordance with section 18” were omitted;
- (d) paragraph 61 (1) (b) has effect as if “referred to in that section” were omitted and “since the day on which the request was received by or on behalf of the agency or Minister” were substituted;

- (e) the reference in subsection 61 (1) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record;
- (f) the reference in subsection 61 (3) to a decision refusing to grant access to a document shall be read as a reference to a decision refusing to amend a record; and
- (g) the reference in subsection 61 (5) to a decision to grant, without deferment, access to a document shall be read as a reference to a decision to amend a record.

**(2) Where—**

- (a) an agency or Minister refuses to amend a record pursuant to a request under section 48;
- (b) the claimant makes an application to the Tribunal for a review of the decision; and
- (c) the Tribunal affirms the decision;

the claimant may, by notice in writing, require the agency or Minister to add to the record a notation—

- (d) specifying the respects in which the information is claimed to be incomplete, incorrect, out of date or misleading; and
- (e) if the information is claimed to be out of date—setting out such information as is claimed to be required to bring up to date or complete the information.

**(3)** Paragraph 49 (1) (c) applies to a notice under subsection (2) in like manner as it applies to a request under section 48.

**(4)** Where a notice is given to an agency or Minister under subsection (2)—

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

- (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading, as the case may be; and
- (ii) giving particulars of the notation;

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

### **Notation of records supplied before commencement of Ordinance**

52. Nothing in this Part is intended to prevent or discourage agencies or Ministers from giving particulars of a notation added to a record in accordance with paragraph 51 (4) (a) to a person (including any agency or Minister) to whom information contained in the record to which the notation relates was given before the commencement of this Ordinance.

## **PART VI—ROLE OF THE OMBUDSMAN**

### **Interpretation**

53. In this Part—

- (a) a reference to the taking of action has the same meaning as it has in the *Ombudsman Ordinance 1989*; and
- (b) action shall be deemed to have been taken by an agency in the circumstances in which it would be deemed to be so taken for the purposes of that Ordinance.

### **Complaints to Ombudsman**

54. (1) Subject to this Ordinance, a person may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under this Ordinance.

(2) Notwithstanding anything in this Ordinance or in subsection 6 (6) of the *Ombudsman Ordinance 1989*, but subject to subsection 6 (5) of that Ordinance, the exercise of the powers of the Ombudsman under that Ordinance in respect of matters arising under this Ordinance is not precluded or restricted because of the rights conferred on persons by this Ordinance to make applications to the Tribunal.

(3) Where a complaint is made to the Ombudsman under the *Ombudsman Ordinance 1989* concerning action taken by an agency in the exercise of powers or the performance of functions under this Ordinance, an application to

the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 15 of the *Ombudsman Ordinance 1989*.

(4) Notwithstanding anything in the *Ombudsman Ordinance 1989*, a report under that Ordinance to a complainant in respect of a complaint arising out of a request under this Ordinance shall not contain information of the kind referred to in subsection 24 (1) of this Ordinance.

### Reports made by the Ombudsman

55. (1) Where, in the course of an investigation by the Ombudsman in relation to action taken by an agency in the exercise of powers or the performance of functions under this Ordinance, the Ombudsman has referred evidence concerning an officer to a Minister or to a principal officer under subsection 9 (12) of the *Ombudsman Ordinance 1989*, the Ombudsman shall give a copy of that evidence to the Head of Administration.

(2) Where, after an investigation by the Ombudsman in relation to action taken by a Department in the exercise of powers or the performance of functions under this Ordinance, a report is made to the Department by the Ombudsman under subsection 18 (2) of the *Ombudsman Ordinance 1989*, the Ombudsman shall give a copy of the report to the Head of Administration.

(3) Each annual report required to be submitted to the Minister by the Ombudsman under subsection 21 (1) of the *Ombudsman Ordinance 1989*, and each additional report submitted to the Minister by the Ombudsman under subsection 21 (3) of that Ordinance—

- (a) shall include a report on the operations of the Ombudsman during the year, or the part of a year, to which the report relates with respect to complaints made to the Ombudsman or investigations commenced or completed by the Ombudsman concerning action taken by agencies in the exercise of powers or the performance of functions conferred by this Ordinance; and
- (b) may include—
  - (i) such observations as the Ombudsman sees fit to make concerning the operation of this Ordinance during the year, or the part of a year, to which the report relates; and
  - (ii) such recommendations as the Ombudsman sees fit to make concerning ways in which public access to documents of

agencies or to official documents of Ministers might be better secured.

### **Documents of agencies claimed to be exempt under certain provisions**

**56.** Where—

- (a) the Ombudsman has commenced an investigation of a decision made under this Ordinance not to grant a request for access to a document; and
- (b) a certificate is given to the Ombudsman under subsection 11 (5) or (6) of the *Ombudsman Ordinance 1989* in relation to that investigation;

the certificate shall not be taken to affect the right of the Ombudsman to seek from any person the reasons for any decision made under this Ordinance that the document is an exempt document or to require any person to furnish any information or to answer any questions concerning that decision.

### **Ombudsman may represent persons in proceedings before the Tribunal**

**57. (1)** The Ombudsman may represent, or arrange for another person to represent, any person who makes application to the Tribunal, under section 60 of this Ordinance, for review of a decision (not being a decision made by a Minister) in the proceedings before the Tribunal pursuant to that application if the Ombudsman is of the opinion, in all the circumstances of the case, that it is reasonable to do so.

**(2)** Without limiting the generality of the matters to which the Ombudsman may have regard in deciding whether to represent an applicant in proceedings before the Tribunal under section 60, the Ombudsman shall have regard to—

- (a) the importance of the principle involved in the matter under review;
- (b) the likelihood that the proceedings will establish a precedent in future proceedings;
- (c) the financial means of the applicant;
- (d) the applicant's prospects of success; and
- (e) the reasonableness of the decision under review.

**(3)** Notwithstanding anything in this Part, the reference in subsection (1) to a decision made by a Minister does not include a reference to a decision made by a person in the exercise of a power delegated by a Minister.

**PART VII—REVIEW OF DECISIONS****Interpretation**

**58.** For the purposes of this Part, unless the contrary intention appears—

- (a) a certificate given under subsection 34 (4) or 35 (5) in respect of a document as described in a request shall be taken to be a certificate given in respect of the document so described notwithstanding that the certificate does not acknowledge the existence or non-existence of the document so described; and
- (b) a claim that a document would, if it exists, be an exempt document under section 34 or 35 shall be taken to be a claim that the document is an exempt document under that section notwithstanding that the existence or non-existence of the document is not acknowledged.

**Internal review**

**59. (1)** Where a decision has been made in relation to a request to an agency otherwise than by the responsible Minister or principal officer of the agency, being—

- (a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document; or
- (b) a decision that the applicant is liable to pay a charge (not being an application fee) in respect of the request for access to a document or in respect of the provision of access to a document to which the request relates;

the applicant may, within 28 days after the day on which that decision is notified to the applicant or within such further period as the principal officer of the agency allows, by application in writing to the principal officer of the agency accompanied by any application fee in respect of the application, request a review of the decision in accordance with this section.

**(2)** Subject to subsection (3), where an application for a review of a decision is made to the principal officer in accordance with subsection (1), the officer shall as soon as possible arrange for himself or herself or a person (not being the person who made the decision) authorised by the officer to conduct such reviews to review the decision and make a fresh decision.

**(3)** Subsection (1) does not apply to—

- (a) a decision made on a review under this section; or

- (b) a decision in relation to the provision of access to a document upon a request that is, under subsection 61 (1) or (3), to be taken to have been given.
- (4) Section 25 applies to a decision made under this section.

### **Applications to Tribunal**

**60. (1)** Subject to this section, an application may be made to the Tribunal for review of—

- (a) a decision refusing to grant access to a document in accordance with a request, not being a decision under section 33, or a decision deferring the provision of access to a document;
- (b) a decision refusing to allow a further period for making an application under subsection 59 (1) for a review of a decision; or
- (c) a decision to which section 28 applies.

**(2)** Subject to subsection (3), where, in relation to a decision referred to in paragraph (1) (a) or (c), a person is or has been entitled to apply under section 59 for a review of the decision, that person is not entitled to make an application under subsection (1) in relation to that decision, but may make such an application in respect of the decision made on the review.

**(3)** Subsection (2) does not prevent an application to the Tribunal in respect of a decision where—

- (a) the person concerned has applied under section 59 for a review of the decision;
- (b) a period of 14 days has elapsed since the day on which that application was received by or on behalf of the agency concerned; and
- (c) the person has not been informed of the result of the review;

and such an application to the Tribunal may be treated by the Tribunal as having been made within the time allowed by subsection (4) if it appears to the Tribunal that there was no unreasonable delay in making the application.

**(4)** Notwithstanding section 27 of the *Administrative Appeals Tribunal Ordinance 1989*, the period within which (subject to any extension granted by the Tribunal) an application under subsection (1) of this section is to be made in respect of a decision is—

- (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant in accordance with section 25 and ending on the 60th day after that day;
- (b) if the decision is taken to have been made by subsection 61 (1) or (3)—the period commencing on the day on which the decision is taken to have been made and ending on the 60th day after that day; or
- (c) if subsection 54 (3) applies—the period commencing on the day on which the Ombudsman has informed the applicant as mentioned in that subsection and ending on the 60th day after that day.

### **Application to Tribunal where decision delayed**

**61. (1)** Subject to this section, where—

- (a) a request has been made to an agency or Minister in accordance with section 18;
- (b) the period of 30 days referred to in that section has expired or, if that period has been extended under subsection 18 (3), that period as so extended has expired; and
- (c) notice of a decision on the request has not been received by the applicant;

the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 60, be taken to have made a decision refusing to grant access to the document on the last day of that period.

**(2)** Where a complaint is made to the Ombudsman under the *Ombudsman Ordinance 1989* concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the end of the period referred to in subsection (1)), an application to the Tribunal under section 60 of this Ordinance by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 15 of the *Ombudsman Ordinance 1989*.

**(3)** Where such a complaint is made before the end of the period referred to in subsection (1), the Ombudsman may, after having investigated the complaint, if he or she is of the opinion that there has been unreasonable delay by an agency in connection with the request, grant to the applicant a certificate stating that he or she is of that opinion and, if the Ombudsman does so, the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 60, be taken to have

made a decision refusing to grant access to the document on the day on which the certificate is granted.

(4) The Ombudsman shall not grant a certificate under subsection (3) where the request to which the complaint relates was made to, or has been referred to, a Minister and is awaiting decision by the Minister.

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

(6) Before dealing further with an application made by virtue of this section, the Tribunal may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the request.

### **Powers of Tribunal**

62. (1) Subject to this section, in proceedings under this Part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and to decide any matter in relation to the request that, under this Ordinance, could have been, or could be, decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister.

(2) Where, in proceedings under this Ordinance, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.

(3) Where a certificate under section 34, 35 or 36 is in force in respect of a document, the powers of the Tribunal do not extend to reviewing the decision to give the certificate but the Tribunal, constituted in accordance with section 64, may determine such question in relation to that certificate as is provided for in whichever of subsections (4), (5) and (6) applies to that certificate.

(4) Where an application is made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 34 or 35 and in respect of which a certificate (other than a certificate of a kind referred to in subsection (6)) is in force under that section, the Tribunal shall, if the applicant so requests, determine the question whether reasonable grounds exist for that claim.

(5) Where an application is made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 36 and in respect of which a certificate is in force under that section, the Tribunal shall, if it is satisfied that paragraph 36 (1) (a) applies to the document and if the applicant so requests, determine the question whether reasonable grounds exist for the claim that the disclosure of the document would be contrary to the public interest.

(6) Where an application is made to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, being a document in respect of which a certificate is in force under subsection 34 (4), the Tribunal shall, if the applicant so requests, determine the question whether reasonable grounds exist for the claim that information as to the existence or non-existence of the document as so described would, if contained in a document of an agency, cause that document to be an exempt document under section 34.

(7) The powers of the Tribunal under this section extend to matters relating to charges payable under this Ordinance in relation to a request.

(8) Where—

- (a) application is made to the Tribunal for review of a decision refusing to grant a person access to a document in accordance with a request; and
- (b) the agency to which or the Minister to whom the request was made—
  - (i) has given to the applicant a notice under this Ordinance of the decision, being a notice that does not include a statement to the effect that access to the document is being refused because of the operation of subsection 11 (2) or of that subsection as modified by regulations under subsection 11 (3); or
  - (ii) informs the Tribunal, either before or in the course of the proceeding for the review of the decision, that the agency or the Minister does not intend, or does not any longer intend, to refuse access to the document for the reason referred to in subparagraph (i);

then, for the purposes of the review by the Tribunal of that decision, subsections 11 (2) and (3) shall be disregarded.

### **Proceedings upon exercise of powers under subsection 62 (4), (5) or (6)**

**63. (1)** Where, in considering a question referred to in subsection 62 (4), (5) or (6) in relation to a document in respect of which a certificate has been given, the Tribunal determines that there are not reasonable grounds for the claim to which the question relates, the appropriate Minister shall, not later than 28 days after the determination of the Tribunal is communicated to him or her, make a decision—

- (a) to revoke the certificate; or
- (b) not to revoke the certificate.

**(2)** Where a Minister makes a decision under subsection (1) to revoke a certificate—

- (a) if the certificate was given under subsection 34 (2) or 35 (3) or (5)—the claim that the document to which the certificate relates is an exempt document shall be taken to have been withdrawn; and
- (b) if the certificate was given under subsection 34 (4)—the Minister shall, as soon as possible after the revocation of the certificate, inform the applicant of the existence or non-existence of the document to which the certificate relates.

**(3)** Where a Minister makes a decision under subsection (1) not to revoke a certificate, the Minister shall—

- (a) give notice in writing of the decision to the applicant as soon as possible; and
- (b) cause a copy of the notice to be laid before the Legislative Assembly within 5 sitting days of the Legislative Assembly after the notice is so given.

**(4)** A notice under subsection (3) shall state the findings of the Minister giving the notice on any material question of fact, the material on which those findings were based, and the reasons for the decision.

**(5)** A Minister is not required to include in a notice under subsection (3) matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document under section 34, 35 or 36.

**(6)** A Minister is not required to include in a notice under subsection (3) information as to the existence or non-existence of a document or the existence or non-existence of a state of fact if that information would, if included in a

document of an agency, cause that last-mentioned document to be an exempt document under section 34 or 35.

(7) Section 13 of the *Administrative Decisions (Judicial Review) Ordinance 1989* does not apply to a decision of a Minister under this section.

(8) Nothing in this section implies that a certificate under section 34, 35 or 36 may not be revoked otherwise than under subsection (1).

(9) In this section, “appropriate Minister” means—

- (a) in relation to a document in respect of which a certificate is in force under section 34 or 36—the Minister who gave, or whose delegate gave, that certificate; or
- (b) in relation to a document in respect of which a certificate is in force under section 35—the Chief Minister.

#### **Constitution of Tribunal for purposes of proceedings under subsection 62 (4), (5) or (6)**

64. Where a request is made to the Tribunal in accordance with subsection 62 (4), (5) or (6), the Tribunal shall be constituted for the purposes of the proceeding by—

- (a) the President; or
- (b) the President and such other members as the President determines.

#### **Hearing of certain proceedings before the Tribunal**

65. (1) This section has effect notwithstanding anything in the *Administrative Appeals Tribunal Ordinance 1989*.

(2) At the hearing of a proceeding referred to in section 64, the Tribunal—

- (a) shall hold in private the hearing of any part of the proceeding during which evidence or information is given, or a document is produced, to the Tribunal by—
  - (i) an agency or an officer of an agency;
  - (ii) a Minister or a member of the staff of a Minister; or
  - (iii) a person holding or performing the duties of an office identified in regulations made for the purposes of section 6, or a member, officer or member of the staff of a body so identified;

or during which a submission is made to the Tribunal by or on behalf of an agency or Minister, being a submission in relation to a claim—

- (iv) in the case of a document in respect of which a certificate under subsection 34 (2) or section 35 is in force—that the document is an exempt document;
- (v) in the case of a document in respect of which a certificate under section 36 is in force—that the disclosure of the document would be contrary to the public interest; or
- (vi) in a case where a certificate under subsection 34 (4) is in force—that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause that document to be an exempt document under section 34; and

(b) subject to subsection (4), shall hold the hearing of any other part of the proceeding in public.

**(3)** Where the hearing of any part of a proceeding is held in private in accordance with subsection (2), the Tribunal—

- (a) may, by order, give directions as to the persons who may be present at that hearing; and
- (b) shall give directions prohibiting the publication of—
  - (i) any evidence or information given to the Tribunal;
  - (ii) the contents of any documents lodged with, or received in evidence by, the Tribunal; and
  - (iii) any submission made to the Tribunal;

at that hearing.

**(4)** Where, in relation to a proceeding referred to in section 64, the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence, information or matter or for any other reason, the Tribunal may, by order—

- (a) direct that the hearing of a part of the proceeding that, but for this subsection, would be held in public shall take place in private and give directions as to the persons who may be present at that hearing;
- (b) give directions prohibiting or restricting the publication of—

- (i) the contents of any document lodged with the Tribunal in relation to the proceeding; or
  - (ii) any evidence or information given to the Tribunal, the contents of any document received in evidence by the Tribunal, or any submission made to the Tribunal, in relation to the proceeding otherwise than at a hearing held in private in accordance with subsection (2); or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given before the Tribunal, or the contents of a document lodged with, or received in evidence by, the Tribunal in relation to the proceeding.

(5) A direction given by the Tribunal under paragraph (3) (b) or (4) (b) does not prevent a person referred to in subparagraph (2) (a) (i), (ii) or (iii) from disclosing, in the course of the performance of his or her duties, any matter to any other person.

#### **Modification of section 42 of the Administrative Appeals Tribunal Ordinance**

66. In its application to a proceeding referred to in section 64 of this Ordinance, section 42 of the *Administrative Appeals Tribunal Ordinance 1989* applies as if subsection (1) of that section were omitted and the following subsection substituted:

“(1) A question of law (including the question whether a particular question is one of law) arising in a proceeding before the Tribunal constituted in accordance with section 64 of the *Freedom of Information Ordinance 1989* shall be decided according to the opinion of the President.”.

#### **Production to the Tribunal of documents in relation to which a certificate has been issued**

67. (1) In any proceedings before the Tribunal under this Ordinance in relation to a document in respect of which a certificate under section 34, 35 or 36 is in force, the Tribunal is entitled to require the production of the document in accordance with this section and not otherwise.

(2) Where, in considering a question referred to in subsection 62 (4), (5) or (6) in relation to a document, the Tribunal is not satisfied, by evidence on affidavit or otherwise, that reasonable grounds exist for the claim to which the question relates, the Tribunal may require the document to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding.

(3) After an inspection of a document under this section, the Tribunal shall return the document to the person by whom it was produced without permitting any person who is not a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

**Review of certain decisions in respect of documents relating to the Commonwealth or a State**

68. (1) Where notice of a decision that a document is not an exempt document under section 34 or under any other provision of this Ordinance has been given in accordance with subsection 26 (2) to the Commonwealth or a State, the Commonwealth or the State may apply to the Tribunal for a review of the decision that the document is not an exempt document under section 34.

(2) Where an application is made under subsection (1)—

- (a) the provisions of this Part (other than sections 60 and 71) apply in like manner as they apply to an application for review of a decision refusing to grant access to a document; and
- (b) the agency or Minister concerned shall, as soon as possible, inform the person who made the request of the application.

(3) Where—

- (a) after consultation between the Territory and the Commonwealth or the Territory and a State in accordance with arrangements of the kind referred to in section 26, a decision is made not to grant access to the document to which the consultation relates; and
- (b) an application is made to the Tribunal for a review of the decision;

the agency or Minister concerned shall, as soon as possible, inform the Commonwealth or the State in accordance with those arrangements of the application.

**Review of certain decisions in respect of documents relating to business affairs etc.**

69. (1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 43 has been given, in accordance with subsection 27 (2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.

- (2) Where an application is made in accordance with subsection (1)—
- (a) the provisions of this Part (other than sections 60 and 71) apply in like manner as they apply to an application for review of a decision refusing to grant access to a document; and
  - (b) the agency or Minister concerned shall, as soon as possible, inform the person who made the request of the application.
- (3) Where—
- (a) upon a request referred to in subsection 27 (1), a decision is made, after the making of submissions by a person in accordance with that subsection, not to grant access to the document to which the request relates so far as it contains the information referred to in paragraph 27 (1) (a); and
  - (b) an application is made to the Tribunal for a review of the decision;

the agency or Minister concerned shall, as soon as possible, inform the person who made the submissions of the application.

### Parties

**70.** For the purposes of this Part and of the application of the *Administrative Appeals Tribunal Ordinance 1989* in respect of proceedings under this Part—

- (a) a decision given by a person on behalf of an agency shall be taken to have been given by the agency;
- (b) in proceedings by virtue of section 61, the agency or Minister to which or to whom the request was made shall be a party to the proceedings; and
- (c) in proceedings for the determination of a question referred to in subsection 62 (4), (5) or (6) in relation to a document, the Minister who is the appropriate Minister for the purposes of section 63 in respect of that document shall, upon application to the Tribunal, be entitled to be a party to the proceedings.

### Onus

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

**Application of section 26 of Administrative Appeals Tribunal Ordinance etc.**

**72. (1)** Where, in relation to a decision in respect of a request, the applicant has been given a notice in writing under section 25, section 26 of the *Administrative Appeals Tribunal Ordinance 1989* does not apply to that decision.

**(2)** If the Tribunal, upon application for a declaration under this subsection made to it by a person to whom a notice has been given under subsection 25 (1), considers that the notice does not contain—

- (a) adequate particulars of findings on material questions of fact;
- (b) an adequate reference to the evidence or other material on which those findings were based; or
- (c) adequate particulars of the reasons for the decision;

the Tribunal may make a declaration accordingly, and, where the Tribunal makes such a declaration, the person responsible for giving the notice shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, give to the applicant an additional notice containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or those reasons.

**Tribunal to ensure non-disclosure of certain matters**

**73. (1)** In proceedings under this Part, the Tribunal shall make such order under subsection 34 (2) of the *Administrative Appeals Tribunal Ordinance 1989* as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of—

- (a) exempt matter contained in a document to which the proceedings relate; or
- (b) information of the kind referred to in subsection 24 (1).

**(2)** Notwithstanding the *Administrative Appeals Tribunal Ordinance 1989*—

- (a) the Tribunal shall not, in its decision, or reasons for a decision, in a matter arising under this Ordinance, include any matter or information of a kind referred to in subsection (1); and
- (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his or her representative where it is necessary to do

so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in subsection (1).

### **Production of exempt documents**

**74. (1)** Where there are proceedings before the Tribunal under this Ordinance in relation to a document that is claimed to be an exempt document, section 37 of the *Administrative Appeals Tribunal Ordinance 1989* does not apply to the document.

**(2)** If the Tribunal is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt document it may require the document to be produced for inspection by members of the Tribunal.

**(3)** If, upon the inspection, the Tribunal is satisfied that the document is an exempt document, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his or her duties as such a member, to have access to the document or disclosing the contents of the document to any such person.

**(4)** The Tribunal—

- (a)** may require the production, for inspection by members of the Tribunal as constituted for the purposes of the proceeding, of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (b)** where an exempt document is produced under such a requirement—shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his or her duties as such a member, to have access to the document or disclosing the contents of the document to any such person.

**(5)** Notwithstanding the preceding provisions of this section but subject to subsection (6), the Tribunal is not empowered, in any proceedings other than proceedings to determine a question referred to in subsection 62 (4), (5) or (6), to require—

- (a) the production of a document in respect of which a certificate under section 34, 35 or 36 is in force; or
- (b) the giving of information in respect of which a certificate under subsection 34 (4) is in force.

(6) Where a certificate of a kind referred to in paragraph (5) (a) identifies a part of the document concerned in the manner provided in subsection 35 (4) or 36 (4), subsection (5) does not prevent the Tribunal from requiring the production, in any proceedings before the Tribunal under this Ordinance in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

(7) Subsections (1), (2), (3) and (4) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those subsections to an exempt document were references to a document in the possession of a Minister that is not an official document of the Minister.

(8) Subsection (2), (3) or (4) does not prevent the Tribunal from causing a document produced in accordance with that subsection to be sent to the Supreme Court in accordance with section 49 of the *Administrative Appeals Tribunal Ordinance 1989*, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Ordinance) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff of the Court in the course of the performance of his or her duties as such a member.

### **Evidence of certificates**

75. In proceedings before the Tribunal under this Part, evidence of a certificate under section 34, 35 or 36, including evidence of the identity or nature of a document to which the certificate relates, may be given by affidavit or otherwise and that evidence is admissible without production of the certificate or of a document to which it relates.

### **Tribunal may make recommendation that costs be available in certain cases**

76. (1) Where—

- (a) a person makes application to the Tribunal under section 60 for review of a decision constituting the action to which the complaint relates; and

- (b) the person is successful, or substantially successful, in the application for review;

the Tribunal may, in its discretion, recommend to the Minister that the costs of the applicant in relation to the proceedings be paid by the Territory.

(2) Without limiting the matters to which the Tribunal may have regard in deciding whether to make a recommendation under subsection (1), the Tribunal shall have regard to—

- (a) the question whether payment of the costs or any part of the costs would cause financial hardship to the applicant;
- (b) the question whether the decision of the Tribunal on review will be of benefit to the general public;
- (c) the question whether the decision of the Tribunal on review will be of commercial benefit to the person making the application to the Tribunal; and
- (d) the reasonableness of the decision reviewed by the Tribunal.

(3) The Minister may, under a recommendation of the Tribunal under subsection (1), authorise the payment of costs to an applicant.

## PART VIII—MISCELLANEOUS

### Protection against certain actions

77. (1) Where access has been given to a document and—

- (a) the access was required by this Ordinance to be given or would, but for subsection 11 (2) or that subsection as modified by regulations under subsection 11 (3), have been so required to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority under section 22 or 59 to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Ordinance to be given;

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

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorisation or approval—

- (a) for the purposes of the law relating to defamation or breach of confidence—of the publication of the document or its contents by the person to whom access is given; or
- (b) for the purposes of the law of copyright—of the doing, by the person to whom access is given, of any act comprised within the copyright in—
  - (i) any literary, dramatic, musical or artistic work;
  - (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
  - (iii) a published edition of a literary, dramatic, musical or artistic work;

contained in the document.

(3) Expressions used in paragraph (2) (b) have the same meaning as in the *Copyright Act 1968* of the Commonwealth.

### Protection in respect of offences

78. Where access has been given to a document and—

- (a) the access was required by this Ordinance to be given or would, but for subsection 11 (2) or that subsection as modified by regulations made under subsection 11 (3), have been so required to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority under section 22 or 59 to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Ordinance to be given;

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

### Reports to Legislative Assembly

79. (1) The Minister shall—

- (a) as soon as practicable after 30 June in each year, prepare a report on the operation of this Ordinance during the year that ended on that 30 June; and
- (b) cause that report to be laid before the Legislative Assembly within 15 sitting days of the Legislative Assembly after the preparation of that report is completed.

(2) The first report under subsection (1) shall relate to the operation of this Ordinance during the period commencing at the commencement of this Ordinance and ending on 30 June 1990.

(3) Each agency shall, in relation to the agency, and each Minister shall, in relation to the Minister's official documents, give to the Minister such information as the Minister requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the giving of that information and the keeping of records for the purposes of this section.

(4) Without limiting the generality of subsection (1) or the kinds of information which an agency or a Minister might be required, under subsection (3), to give to the Minister, a report of the Minister shall set out—

- (a) particulars of the operations of each agency and Minister under this Ordinance during the year to which the report relates, including, in relation to each agency and Minister—
  - (i) the number of requests under section 18 for access to documents received during the year;
  - (ii) the number of requests received at any time in respect of which during the year—
    - (A) access other than partial access was granted to the document or all of the documents to which the request related;
    - (B) access was refused to the document or all of the documents to which the request related; or
    - (C) partial access was granted;
  - (iii) the number of applications made during the year for the review of decisions under section 59 and particulars of the results of such reviews;

- (iv) the number of applications made during the year to the Tribunal for the review of decisions and particulars of the results of such reviews;
  - (v) particulars of the total charges and application fees collected during the year in dealing with requests and other applications whenever received; and
  - (vi) the number of requests received during the year to amend records under section 48 and particulars of the results of such requests;
- (b) an identification of the guidelines, if any, issued during the year to which the report relates in relation to the manner in which agencies should comply with their obligations under this Ordinance; and
  - (c) a description of any other efforts to assist agencies to comply with their obligations under this Ordinance.
- (5) For the purposes of subparagraph (4) (a) (ii), partial access shall be taken to have been granted in respect of a request if either or both of the following conditions are satisfied in relation to the request:
- (a) access was granted to a copy of the document or of any of the documents to which the request related with deletions;
  - (b) the request related to 2 or more documents and access was refused to any 1 or more of the documents.
- (6) The first report by the Minister under subsection (1) shall include particulars of the extent to which the responsible Minister of each agency, and each agency, has complied with sections 7 and 8 of this Ordinance.

### **Determinations of fees and charges**

**80. (1)** The Minister may, by notice in the *Gazette*—

- (a) determine the amounts of application fees under this Ordinance;
- (b) determine amounts of charges, or charges at rates, fixed by or in accordance with the notice in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Ordinance;
- (c) require deposits on account of those charges; or
- (d) make other provision in relation to those charges.

(2) Without limiting the generality of subsection (1), a notice determining or making provision in relation to a charge—

- (a) shall not be such that the amount or rate of charge varies for different applicants or in respect of documents of different agencies;
- (b) shall, if a charge is made for time that is spent by an agency or a Minister in—
  - (i) searching for or retrieving a document; or
  - (ii) making, or doing things related to making, a decision on a request for access;

provide for the charge in respect of that activity to be calculated at a single hourly rate that shall be applied by the agency or Minister in respect of any request, regardless of the classification or designation of the officer who undertakes the work involved; and

- (c) may provide for a charge to be made that takes into account the direct costs incurred by an agency or a Minister in making available an officer to supervise the inspection by a person of any document for which a request for access has been made under this Ordinance.

(3) Where, as a result of a request, access is given to a document in respect of which the applicant would not be entitled to access under this Ordinance, the provisions of any notice in relation to charges apply as if the applicant had been given access to that document in accordance with an entitlement under this Ordinance.

(4) The Minister may, by signed instrument, delegate to a person all or any of his or her powers under this section.

### **Regulations**

81. The Executive may make regulations, not inconsistent with this Ordinance, prescribing all matters—

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance;

and, in particular, making provision for or in relation to the officers who may give decisions on behalf of an agency.

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.