

Attachment C - Freedom of Information Act 1982

Relevant Provisions

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

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

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

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

Exemptions and conditional exemptions

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

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

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

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

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

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

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of ***exempt document*** in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

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

11C Publication of information in accessed documents

Scope

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
 - (a) personal information about any person, if it would be unreasonable to publish the information;
 - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
 - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;

- (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

Publication

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
 - (a) making the information available for downloading from the website; or
 - (b) publishing on the website a link to another website, from which the information can be downloaded; or
 - (c) publishing on the website other details of how the information may be obtained.
- (4) The agency may impose a charge on a person for accessing the information only if:
 - (a) the person does not directly access the information by downloading it from the website (or another website); and
 - (b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.
- (5) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

Time limit for publication

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

working day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the place where the function of publishing the information under this section is to be performed.

15 Requests for access

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
 - (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and

- (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

Agency required to assist

- (3) Where a person:
- (a) wishes to make a request to an agency; or
 - (b) has made to an agency a request 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.

Note: An agency or Minister may refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking the request consultation process (see section 24).

- (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.

Timeframes for dealing with request

- (5) On receiving a request, the agency or Minister must:
- (a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and
 - (b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).
- (5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.

Extension of processing period to comply with requirements of section 26A, 27 or 27A

- (6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):
- (a) the period is extended by a further period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

Extension of processing period to consult foreign entity

- (7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:
 - (a) consult one of the following:
 - (i) a foreign government;
 - (ii) an authority of a foreign government;
 - (iii) an international organisation; and
 - (b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).
- (8) If this subsection applies:
 - (a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

15AC Decision not made on request within time—deemed refusal

Scope

- (1) This section applies if:
 - (a) a request has been made to an agency or Minister; and
 - (b) the period (the ***initial decision period***) covered by subsection (2) has ended since the day the request was received by, or on behalf of, the agency or Minister; and
 - (c) notice of a decision on the request has not been received by the applicant.
- (2) The initial decision period covered by this subsection is the period of 30 days mentioned in paragraph 15(5)(b) (or that period as extended, otherwise than under this section).

Deemed refusal

- (3) Subject to this section:
 - (a) the principal officer of the agency or the Minister is taken to have made a decision personally refusing to give access to the document on the last day of the initial decision period; and
 - (b) notice of the decision is taken to have been given under section 26 to the applicant on the same day.

Agency or Minister may apply for further time

- (4) However, the agency or Minister concerned may apply, in writing, to the Information Commissioner for further time to deal with the request.
- (5) The Information Commissioner may allow further time considered appropriate by the Information Commissioner for the agency or Minister to deal with the request.
- (6) If the Information Commissioner allows further time, the Information Commissioner may impose any condition that he or she considers appropriate.
- (7) Subsection (3) (deemed refusal) does not apply, and is taken never to have applied, if the agency or Minister:
 - (a) makes a decision on the request within the further time allowed; and
 - (b) complies with any condition imposed under subsection (6).

- (8) However, subsection (3) (deemed refusal) applies as if the initial decision period were extended by the time allowed by the Information Commissioner under subsection (5) if the agency or Minister:
- (a) does not make a decision on the request within the further time allowed; or
 - (b) does not comply with any condition imposed under subsection (6).

No further time allowed

- (9) If subsection (8) (deemed refusal after allowance of further time) applies, the Information Commissioner does not have the power to allow further time under this section in relation to the decision taken to be made under subsection (3) in its operation as affected by subsection (8).

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an ***edited copy***) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
- (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), 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 him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

42 Documents subject to legal professional privilege

- (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 is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
 - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

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

45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
 - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
 - (b) an agency or the Commonwealth.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation

obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth.

Exceptions

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

- (a) operational information (see section 8A);
- (b) purely factual material.

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

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

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47G Public interest conditional exemptions—business

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

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

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

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

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

making the request is the organisation or a person acting on behalf of the organisation.

- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:
- (a) the Commonwealth or a State; or
 - (b) an authority of the Commonwealth or of a State; or
 - (c) a Norfolk Island authority; or
 - (d) a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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

91 Protection against civil liability—particular situations

- (1A) Section 90 applies in relation to the giving of access to a document even if, in giving access, there has been a failure to comply with section 26A, 27 or 27A.
- (1B) No action lies against the Commonwealth, an agency, a Minister or an officer merely because of a failure to comply with section 26A, 27 or 27A in relation to giving access to a document.
- (1C) If a document has been shown to a person, organisation or proprietor for any of the following purposes:
- (a) consultation with a State under subsection 26A(2);
 - (b) enabling the person, organisation or proprietor to make a submission under subsection 27(4);
 - (c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(3);
- then:
- (d) no action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, an agency, a Minister or an officer because of the showing of the document; and
 - (e) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the showing of the document lies against the author of the document or any other person because of that author or other person having shown the document.
- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken to constitute an authorization 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;
 - (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.

(2A) If a document has been shown to a person, organisation or proprietor for any of the following purposes:

- (a) consultation with a State under subsection 26A(1);
- (b) enabling the person, organisation or proprietor to make a submission under subsection 27(1);
- (c) enabling the person or the person's legal personal representative to make a submission under subsection 27A(1);

the showing of the document is not taken to constitute an authorisation or approval:

- (d) 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, organisation or proprietor to whom the document is shown; and
- (e) for the purposes of the law of copyright—of the doing, by the person, organisation or proprietor to whom the document is shown, of any act comprised within the copyright in:
 - (i) any literary, dramatic, musical or artistic work; or
 - (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) or (2A)(e) have the same meaning as in the *Copyright Act 1968*.

(4) For the purposes of paragraphs (1C)(a) and (2A)(a), **State** has the same meaning as in section 26A.

NOTE: A complete copy of the *Freedom of Information Act 1982* can accessed electronically via the Internet at the following link <https://www.legislation.gov.au/Details/C2019C00288>