

Section 26A

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**26A Consultation—documents affecting Commonwealth-State relations etc.**

*Scope*

- (1) This section applies if:
  - (a) arrangements have been entered into between the Commonwealth and a State about consultation under this section; and
  - (b) a request is made to an agency or Minister for access to a document that:
    - (i) originated with, or was received from, the State or an authority of the State; or
    - (ii) contains information (*State-originated information*) that originated with, or was received from, the State or an authority of the State; and
  - (c) it appears to the agency or Minister that the State may reasonably wish to contend that:
    - (i) the document is conditionally exempt under section 47B (Commonwealth-State relations etc.); and
    - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

*Consultation required*

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

*Decision to give access*

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

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

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

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

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

*Edited copies and State-originated information*

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

*Definition*

- (6) In this section:

*State* includes Norfolk Island.

## **26AA Consultation—documents affecting Norfolk Island intergovernmental relations**

*Scope*

- (1) This section applies if:
- (a) either:

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

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

*Edited copies, Commonwealth-originated information and State-originated information*

- (5) This section applies:
- (a) in relation to an edited copy of a document in the same way as it applies to the document; and
  - (b) in relation to a document containing Commonwealth-originated information—to the extent to which the document contains such information; and
  - (c) in relation to a document containing State-originated information—to the extent to which the document contains such information.

**27 Consultation—business documents**

*Scope*

- (1) This section applies if:
- (a) a request is made to an agency or Minister for access to a document containing information (*business information*) covered by subsection (2) in respect of a person, organisation or undertaking; and
  - (b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (*the person or organisation concerned*) might reasonably wish to make a contention (*the exemption contention*) that:
    - (i) the document is exempt under section 47 (trade secrets etc.); or
    - (ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

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

- (2) This subsection covers the following information:
- (a) in relation to a person—information about the person's business or professional affairs;
  - (b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.
- (3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention because of business information in a document, the agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

*Opportunity to make submissions*

- (4) The agency or Minister must not decide to give access to the document unless:
- (a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
  - (b) the agency or the Minister has regard to any submissions so made.
- (5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).