

TASMANIA

RIGHT TO INFORMATION BILL 2009

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Object of Act
4. Act binds Crown
5. Interpretation
6. Exclusions of certain persons or bodies

PART 2 – RIGHT TO INFORMATION

Division 1 – General right to information

7. Right to information
8. Persons entitled to some information provided to public authority by funded private organisation
9. Persons not entitled to apply for certain information already otherwise available
10. Electronic information
11. Information held by Archives Office
12. Information to be provided apart from Act

Division 2 – Process for assessed disclosure of information

13. Application for assessed disclosure of information
14. Transfer of applications

15. Time within which applications for assessed disclosure of information are to be decided
16. Charges for information
17. Deferment of provision of information
18. Provision of information
19. Requests may be refused if resources unreasonably diverted
20. Repeat or vexatious applications may be refused
21. Decision to be made on behalf of public authority by authorised person
22. Reasons to be given
23. Other responsibilities of principal officer
24. Principal officer or Minister may delegate his or her functions

PART 3 – EXEMPT INFORMATION

Division 1 – Exemptions not subject to public interest test

25. Executive Council information
26. Cabinet information
27. Internal briefing information of a Minister
28. Information not relating to official business
29. Information affecting national or state security, defence or international relations
30. Information relating to enforcement of the law
31. Legal professional privilege
32. Information related to closed meetings of council

Division 2 – Exemptions subject to public interest test

33. Public interest test
34. Information communicated by other jurisdictions
35. Internal deliberative information
36. Personal information of person
37. Information relating to business affairs of third party
38. Information relating to business affairs of public authority
39. Information obtained in confidence

40. Information on procedures and criteria used in certain negotiations of public authority
41. Information likely to affect State economy
42. Information likely to affect cultural, heritage and natural resources of the State

PART 4 – REVIEW OF DECISIONS

43. Internal review
44. Application for external review
45. Other applications for review
46. Review where decisions delayed
47. Powers of Ombudsman
48. Decisions of Ombudsman

PART 5 – MISCELLANEOUS

49. Guidelines and advice
50. Offences
51. Protection against actions for defamation or breach of confidence
52. Protection in respect of criminal offences under other Acts
53. Reporting
54. Regulations
55. Administration of Act
56. Legislation repealed
57. Legislation rescinded

SCHEDULE 1 – MATTERS RELEVANT TO ASSESSMENT OF PUBLIC INTEREST

SCHEDULE 2 – MATTERS IRRELEVANT TO ASSESSMENT OF PUBLIC INTEREST

SCHEDULE 3 – MATTERS RELEVANT TO ASSESSMENT OF REFUSING APPLICATION

SCHEDULE 4 – LEGISLATION REPEALED

SCHEDULE 5 – LEGISLATION RESCINDED

RIGHT TO INFORMATION BILL 2009

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 October 2009

*(Brought in by the Minister for Justice, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

An Act to give members of the public the right to obtain information contained in the records of the Government and public authorities and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Right to Information Act 2009*.

2. Commencement

This Act commences on 1 July 2010 or on such earlier day as may be proclaimed.

Right to Information Act 2009
Act No. of

s. 3

Part 1 – Preliminary

3. Object of Act

- (1) The object of this Act is to improve democratic government in Tasmania –
 - (a) by increasing the accountability of the executive to the people of Tasmania; and
 - (b) by increasing the ability of the people of Tasmania to participate in their governance; and
 - (c) by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.
- (2) This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.
- (3) This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.
- (4) It is the intention of Parliament –
 - (a) that this Act be interpreted so as to further the object set out in subsection (1); and
 - (b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. Interpretation

(1) In this Act, unless the contrary intention appears –

“active disclosure” means a disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than under Division 2 of Part 2;

“Archives Office” has the same meaning as in the *Archives Act 1983*;

“assessed disclosure” means a disclosure of information by a public authority or a Minister in response to an application in accordance with section 13;

“council-owned company” means a company incorporated under the Corporations Act that is controlled by one or more councils or another company that is so controlled;

“delegated officer” means a person specified in an instrument of delegation in accordance with section 24;

Right to Information Act 2009
Act No. of

s. 5

Part 1 – Preliminary

“exempt information” means information which is exempt information by virtue of a provision of Part 3;

“external party” means a person or organisation who provides the person’s or organisation’s views pursuant to a request under section 36(2)(f) or section 37(2)(f);

“information” means –

- (a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording and photograph; and
- (b) anything in which information is embodied so as to be capable of being reproduced;

“information in the possession of a Minister” means information in the possession of a Minister that relates to the official business of the Minister, but does not include information which is in the possession of the Minister for the sole purpose of collation and forwarding to a body other than a public authority;

“information in the possession of a public authority” means information in the possession of a public authority that relates to the official business of the authority, but does not include information which is in the possession of

Right to Information Act 2009
Act No. of

Part 1 – Preliminary

s. 5

the public authority for the sole purpose of collation and forwarding to a body other than another public authority;

“Integrity Commission” has the same meaning as in the *Integrity Commission Act 2009*;

“officer”, in relation to a public authority, includes a member of the public authority, a member of the staff of the public authority and any person employed by or for the public authority, whether or not that person is a State Service officer or State Service employee;

“Ombudsman” means the Ombudsman appointed under the *Ombudsman Act 1978*;

“personal information” means any information or opinion in any recorded format about an individual –

- (a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and
- (b) who is alive, or has not been dead for more than 25 years;

“principal officer” means –

- (a) in relation to an Agency, within the meaning of the *State Service Act 2000*, the Head of Agency; or

Right to Information Act 2009
Act No. of

s. 5

Part 1 – Preliminary

- (b) in relation to the Police Service, the Commissioner of Police; or
- (c) in relation to a council, the general manager of that council; or
- (d) the chief executive of a State-owned company or council-owned company; or
- (e) the chief executive officer of a Government Business Enterprise; or
- (f) in the case of any other public authority, the principal administrative officer of the public authority;

“public authority” means –

- (a) an Agency, within the meaning of the *State Service Act 2000*; or
- (b) the Police Service; or
- (c) a council; or
- (d) a statutory authority; or
- (e) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose; or
- (f) a body whose members, or a majority of whose members, are

Right to Information Act 2009
Act No. of

Part 1 – Preliminary

s. 5

appointed by the Governor or a Minister of the Crown; or

- (g) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; or
- (h) a council-owned company; or
- (i) a State-owned company;

“regulations” means regulations made and in force under this Act;

“required disclosure” means a disclosure of information by a public authority where the information is required to be published by this or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement;

“responsible Minister” means –

- (a) in relation to an Agency, within the meaning of the *State Service Act 2000*, the Minister responsible for the administration of the Agency; or
- (b) in relation to another public authority, the Minister administering the Act by which the public authority was established;

Right to Information Act 2009
Act No. of

s. 5

Part 1 – Preliminary

“routine disclosure” means a disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure;

“State-owned company” means a company incorporated under the Corporations Act that is controlled by –

- (a) the Crown; or
- (b) a Government Business Enterprise; or
- (c) a statutory authority; or
- (d) another company that is so controlled;

“statutory authority” means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority but does not include an agency.

- (2) For the purpose of the definition of “information in the possession of a Minister”, a Minister is taken to be in possession of information if the Minister is entitled to access the information and

Right to Information Act 2009
Act No. of

Part 1 – Preliminary

s. 5

it is not information in the possession of a public authority.

- (3) For the purpose of the definition of “information in the possession of a public authority”, a public authority is taken to be in possession of information if the public authority is entitled to the information and it is not information in the possession of a Minister.
- (4) An unincorporated body established by or in accordance with an Act for the purpose of assisting or performing functions connected with a public authority is not taken to be a public authority for the purposes of this Act but is taken to be comprised within the public authority.
- (5) A person is not a public authority solely because the person holds, or performs the duties of –
 - (a) a prescribed office; or
 - (b) an office the duties of which the person performs as duties of his or her employment as an officer of a public authority; or
 - (c) an office or member of a public authority; or
 - (d) an office established by or in accordance with an Act for the purposes of a public authority.
- (6) A reference to the personal affairs of a person includes the personal affairs of a deceased person, and rights given by this Act in respect of

Right to Information Act 2009
Act No. of

s. 6

Part 1 – Preliminary

the personal affairs of a person are, where the person is a deceased person, taken to be rights that may be exercised in respect of those personal affairs by the next-of-kin of that person.

6. Exclusions of certain persons or bodies

- (1) This Act does not apply to information in the possession of the following persons or public authorities, or in the possession of a person whose services are provided or procured for the purposes of assisting the person or public authority, unless the information relates to the administration of the relevant public authority:
- (a) the Governor;
 - (b) a court;
 - (c) a tribunal;
 - (d) the Integrity Commission;
 - (e) a judge;
 - (f) an associate judge;
 - (g) a magistrate;
 - (h) the Solicitor-General;
 - (i) the Director of Public Prosecutions;
 - (j) the Ombudsman;
 - (k) the Auditor-General;

Right to Information Act 2009
Act No. of

Part 1 – Preliminary

s. 6

- (l) the State Service Commissioner;
 - (m) the Anti-Discrimination Commissioner;
 - (n) the Public Guardian;
 - (o) the Health Complaints Commissioner;
 - (p) Parliament;
 - (q) a Member of Parliament.
- (2) This Act does not apply to the Law Society of Tasmania (the “society”) established under the *Law Society Act 1962* and continued as a body corporate under the *Legal Profession Act 2007* except –
- (a) in relation to the performance and exercise of the society’s functions and powers under Parts 8 and 9 of the *Legal Profession Act 1993*; and
 - (b) in relation to the performance and exercise of the society’s functions and powers as a prescribed authority under Part 3.2 of Chapter 3 and Chapter 5 of the *Legal Profession Act 2007*.

PART 2 – RIGHT TO INFORMATION

Division 1 – General right to information

7. Right to information

A person has a legally enforceable right to be provided, in accordance with this Act, with information in the possession of a public authority or a Minister unless the information is exempt information.

8. Persons entitled to some information provided to public authority by funded private organisation

If a private organisation is funded by or performs a role of a public authority, a person is entitled to the information related to –

- (a) that performance; or
- (b) the progress of work; or
- (c) the evaluation of work; or
- (d) the expenditure of public moneys –

held by the public authority, unless the information is exempt information.

9. Persons not entitled to apply for certain information already otherwise available

A person is not entitled under this Part to –

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 10

- (a) information that may be inspected by the public in accordance with another Act; or
- (b) information that may be purchased at a reasonable cost in accordance with arrangements made by a public authority.

10. Electronic information

- (1) If information is stored in an electronic form, a Minister or public authority may refuse an application under section 13 if –
 - (a) the information cannot be produced using the normal computer hardware and software and technical expertise of the public authority; and
 - (b) producing it would substantially and unreasonably divert the resources of the public authority from its usual operations, having regard to the factors in Schedule 3.
- (2) A person is not entitled to information contained in back-up systems, or information that has been disposed of in compliance with an approved disposal schedule issued under the *Archives Act 1983*.

11. Information held by Archives Office

- (1) A record placed in the custody of the Archives Office by a public authority is taken for the

Right to Information Act 2009
Act No. of

s. 12

Part 2 – Right to Information

purposes of this Act to be information in the possession of that public authority or, if that public authority no longer exists, the public authority the functions of which the information is most closely related to.

- (2) Notwithstanding subsection (1), records of a Royal Commission or a Commission under the *Commissions of Inquiry Act 1995* deposited in the Archives Office are, for the purpose of this Act, to be taken to be information in the possession of the Department.
- (3) Subsection (1) does not apply to a record that can be inspected by the public at the Archives Office otherwise than in accordance with this Act.
- (4) Sections 15 and 16 of the *Archives Act 1983* do not prevent a person from being provided, in accordance with this Act, with information contained in a State record deposited in the Archives Office.
- (5) This Act does not affect access to records in the Archives Office in accordance with the *Archives Act 1983*.

12. Information to be provided apart from Act

- (1) This Act does not prevent and is not intended to discourage a public authority or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act.

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 12

- (2) Subject to guidelines issued by the Ombudsman under section 49, public authorities or Ministers may disclose information to the public as –
- (a) a required disclosure; or
 - (b) a routine disclosure; or
 - (c) an active disclosure; or
 - (d) an assessed disclosure.
- (3) Assessed disclosure is the method of disclosure of last resort and –
- (a) the principal officer of a public authority is to ensure that there are adequate processes in place in the public authority to ensure that there is appropriate active disclosure, routine disclosure or required disclosure of information by the public authority; and
 - (b) the principal officer of a public authority is to ensure that the processes in place under paragraph (a) comply with the guidelines issued by the Ombudsman under section 49; and
 - (c) the principal officer of a public authority or a Minister may refuse an application made in accordance with section 13 if the information that is the subject of the application –
 - (i) is otherwise available; or

Right to Information Act 2009
Act No. of

s. 13

Part 2 – Right to Information

- (ii) will become available, in accordance with a decision that was made before receipt of the application, as a required disclosure or routine disclosure within a period of time specified by the public authority or Minister but not exceeding 12 months from the date of the application.

Division 2 – Process for assessed disclosure of information

13. Application for assessed disclosure of information

- (1) An application for assessed disclosure of information may be made to any public authority or Minister who the applicant believes has the information.
- (2) A person who seeks –
 - (a) information in the possession of a public authority; or
 - (b) information in the possession of a Minister –must make a written application to the public authority or Minister for an assessed disclosure of the information.
- (3) An application must contain the minimum information as prescribed in the regulations.

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 13

- (4) An application for an assessed disclosure of information may be made by reference to the information contained in a particular record or document without specifying the subject matter of that record or document.
- (5) A public authority must provide the minimum information as prescribed in the regulations to an applicant about the public authority's assessment procedure for applications for assessed disclosures of information.
- (6) If a person –
- (a) wants to make an application to a public authority or Minister; or
 - (b) has made an application that does not comply with this section –
- the public authority or Minister must take reasonable steps to assist the person to make an application that complies with this section.
- (7) A public authority or a Minister may negotiate with an applicant to refine or redirect his or her application for assessed disclosure of information.
- (8) If requested to do so by a person or if it is appropriate to do so to assist a person to make an application for assessed disclosure of information, a public authority must make available to that person general details of the information in the possession of the public authority.

14. Transfer of applications

- (1) If the application for assessed disclosure of information is made to a public authority or a Minister and the subject matter or part of the subject matter of the information requested is more closely connected with the functions of another public authority or Minister, the public authority or Minister to which the application was made must –
 - (a) promptly transfer the application, in full or part, to that other public authority or that other Minister and inform the person making the application accordingly; and
 - (b) if it is necessary to do so in order to enable that other public authority or that other Minister to deal with the application, send any relevant information to that public authority or Minister.
- (2) If an application is transferred to a public authority or Minister, it is to be taken, for the purpose of section 15, to be an application made to that public authority or Minister and received by the public authority or Minister –
 - (a) at the time at which the transfer was made; or
 - (b) at the expiration of 10 working days after the date of the original application –

whichever first occurs.

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 15

- (3) If an application is made to the Archives Office for information contained in a record to which section 11(1) applies, the Archives Office must promptly transfer the application to the public authority taken, by virtue of that subsection, to be in possession of that record and must inform the applicant accordingly.

15. Time within which applications for assessed disclosure of information are to be decided

- (1) A public authority or Minister must take all reasonable steps to enable an applicant to be notified of a decision on an application for an assessed disclosure of information as soon as practicable but in any case not later than 20 working days after the acceptance of the application.
- (2) Where negotiations are entered into under section 13(7), the negotiations are to be completed expeditiously and in any case not later than 10 working days after the receipt of the application.
- (3) Subject to section 16(3), an application for an assessed disclosure is taken to be accepted by a public authority or Minister for the purposes of subsection (1) –
 - (a) on the day the application is received by the public authority or Minister; or
 - (b) if negotiations are entered into under section 13(7), on completion of the

Right to Information Act 2009
Act No. of

s. 15

Part 2 – Right to Information

period for negotiations under
subsection (2).

- (4) The time within which a public authority or a Minister is to make a decision on an application for assessed disclosure may be extended –
 - (a) by agreement with the applicant; or
 - (b) if agreement cannot be reached and the application is complex or voluminous or both complex and voluminous in nature and the absence of agreement is in the opinion of the public authority unreasonable, by the Ombudsman on an application made to the Ombudsman by the public authority.
- (5) Where a public authority or Minister has decided to consult a third party under section 36 or 37 about the release of information in determining an assessed disclosure, a further 20 working days in addition to the 20 working days referred to in subsection (1) is allowed for a decision on an application for an assessed disclosure.
- (6) If there is no response from the third party within 15 working days from the time of the consultation, the public authority or Minister may conclude the assessment without considering the input of the third party.
- (7) Nothing in this section permits the release of information during –
 - (a) the relevant period specified in section 36(5) in the case of an application

relating to the personal information of a person; or

- (b) the relevant period specified in section 37(5) in the case of an application relating to the business affairs of a third party.

16. Charges for information

- (1) All applications for assessed disclosure of information must be accompanied by an application fee of 25 fee units.
- (2) The application fee may be waived if –
 - (a) the applicant is impecunious; or
 - (b) the applicant is a Member of Parliament acting in connection with his or her official duty; or
 - (c) the applicant is able to show that he or she intends to use the information for a purpose that is of general public interest or benefit.
- (3) Before an application is accepted by a public authority or a Minister, the application fee must be paid or a decision to waive the fee under subsection (2) must be made.

Right to Information Act 2009
Act No. of

s. 17

Part 2 – Right to Information

17. Deferment of provision of information

- (1) A public authority or a Minister may defer providing information if –
 - (a) a decision has been made before receipt of the application for assessed disclosure of information that the information will be disclosed as a required disclosure or routine disclosure of information within a period of time specified by the public authority or Minister but not exceeding 12 months from the date of the application; or
 - (b) the information was prepared for presentation to Parliament, or has been designated by the responsible Minister as appropriate for presentation to Parliament, but is yet to be presented.
- (2) If the provision of information is deferred, the public authority or Minister must, when informing the applicant of the reason for the deferral, indicate as far as practicable, when the information will be published or presented.
- (3) A public authority or a Minister has no power under subsection (1)(b) to defer providing information when more than 15 sitting-days of either House of Parliament have passed since the information was presented to the Minister for the purpose of being presented to Parliament.

18. Provision of information

- (1) Information requested under this Act may be provided –
 - (a) by giving the applicant a reasonable opportunity to inspect the record containing the information; or
 - (b) in the case of information recorded or embodied in a record in a manner in which it can be reproduced, by providing the applicant with a transcript of the information; or
 - (c) by providing the applicant with a copy, including an electronic copy, of the record containing the information; or
 - (d) in the case of information contained in a record from which sounds or visual images can be reproduced, by giving the applicant a reasonable opportunity to hear the sounds or view the images.
- (2) A copy of information that is provided with exempt information deleted is to have included on it a note to the effect that the copy is not a complete copy of the original information.
- (3) If –
 - (a) information requested under this Act is included with other information; and
 - (b) the information requested can be extracted from that other information by

Right to Information Act 2009
Act No. of

s. 18

Part 2 – Right to Information

the use of a computer or other equipment usually available to the public authority or Minister –

the information is to be extracted accordingly.

- (4) Without prejudice to subsection (1), if –
- (a) a public authority or a Minister has information requested by an applicant in a particular form; and
 - (b) the applicant has indicated a preference for receiving the information in that particular form –

the public authority or Minister must provide that information by providing the applicant with the information or part of the information in the particular form unless it is impracticable to do so or to do so would breach copyright.

- (5) If –
- (a) a request is made to a public authority or Minister for information of a medical or psychiatric nature concerning the person making the request; and
 - (b) it appears to the principal officer of the public authority or to that Minister that the provision of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person –

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 19

the principal officer or Minister may direct that the information must not be provided to the person who made the request but must instead be provided to a legally qualified medical practitioner nominated by that person and approved by the principal officer or Minister.

19. Requests may be refused if resources unreasonably diverted

- (1) If the public authority or Minister dealing with a request is satisfied that the work involved in providing the information requested –
- (a) would substantially and unreasonably divert the resources of the public authority from its other work; or
 - (b) would interfere substantially and unreasonably with the performance by that Minister of the Minister's other functions –

having regard to –

- (c) the matters specified in Schedule 3 –

the public authority or Minister may refuse to provide the information without identifying, locating or collating the information.

- (2) A public authority or Minister must not refuse to provide information by virtue of subsection (1) without first giving the applicant a reasonable opportunity to consult the public authority or Minister with a view to the applicant being

Right to Information Act 2009
Act No. of

s. 20

Part 2 – Right to Information

helped to make an application in a form that would remove the ground for refusal.

20. Repeat or vexatious applications may be refused

If an application for an assessed disclosure of information is made by an applicant for access to information which –

- (a) in the opinion of the public authority or a Minister, is the same or similar to information sought under a previous application to a public authority or Minister and the application does not, on its face, disclose any reasonable basis for again seeking access to the same or similar information; or
- (b) is an application which, in the opinion of the public authority or Minister, is vexatious or remains lacking in definition after negotiation entered into under section 13(7) –

the public authority or Minister may refuse the application on the basis that it is a repeat or vexatious application.

21. Decision to be made on behalf of public authority by authorised person

- (1) A decision in respect of an application for information made to a public authority is to be made by –

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 22

- (a) the responsible Minister; or
 - (b) the principal officer of the public authority; or
 - (c) a delegated officer.
- (2) A person who makes a decision in accordance with this Act is to act impartially in making that decision.

22. Reasons to be given

- (1) If, in relation to an application for information made to a public authority or Minister, the public authority or Minister decides –
- (a) that the applicant is not entitled to the information because it is exempt information; or
 - (b) that provision of the information be deferred in accordance with section 17; or
 - (c) that provision of the information be refused by virtue of section 19 or 20 –

the public authority or Minister must give the applicant written notice of the decision.

- (2) Notice given under subsection (1) is to –
- (a) state the reasons for the decision; and
 - (b) if the decision was made on behalf of a public authority or Minister, state the

Right to Information Act 2009
Act No. of

s. 22

Part 2 – Right to Information

name and designation of the person who made the decision; and

(c) inform the applicant of –

(i) the applicant’s right to apply for a review of the decision; and

(ii) the authority to which the application for review can be made; and

(iii) the time within which the application for review must be made; and

(d) if the decision involves or relies upon consideration of the public interest in the application of a provision of this Act, state the public interest considerations on which that decision was based.

(3) A public authority or Minister is not required by subsections (1) and (2) to include in a notice given under subsection (1) any exempt information.

(4) A public authority or Minister may, in a notice given under subsection (1), state the decision in terms which neither confirm nor deny the existence of any information which on a ground specified in Division 1 of Part 3 would be exempt information.

23. Other responsibilities of principal officer

- (1) The principal officer of a public authority must –
- (a) develop policies and procedures in relation to disclosure of information for use in the public authority; and
 - (b) publish details of this Act, including the policies and procedures developed under paragraph (a), and the way in which people can exercise their rights under it in respect of the public authority; and
 - (c) as soon as practicable after the end of each financial year provide details on information published as required disclosures or routine disclosures by the public authority; and
 - (d) as soon as practicable after the end of each financial year provide details on information released as assessed disclosures, in particular –
 - (i) the number of applications made to the public authority under this Act; and
 - (ii) the number of applications refused by the public authority and the provisions of this Act under which they were refused; and
 - (iii) the number of applications relating to information which was

Right to Information Act 2009
Act No. of

s. 24

Part 2 – Right to Information

exempt information or part of the information was exempt information and the provisions of this Act under which the information was exempt information; and

(iv) the number of applications for internal review made to the principal officer under section 43 and the results of those applications.

(2) The principal officer of a public authority may appoint an officer to assist him or her with the functions specified in subsection (1).

24. Principal officer or Minister may delegate his or her functions

(1) The principal officer of a public authority or a Minister may by instrument in writing delegate to a person specified in the instrument the performance or exercise of such of his or her functions or powers under this Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.

(2) A delegation may be for a period not exceeding 3 years.

(3) The principal officer of a public authority or a Minister must not delegate to a person the performance or exercise of his or her functions

Right to Information Act 2009
Act No. of

Part 2 – Right to Information

s. 24

or powers under this Act unless the principal officer or Minister is satisfied that the person has the skills and knowledge necessary to perform or exercise those functions or powers.

- (4) Notwithstanding any delegation under this section, the principal officer of a public authority or a Minister may continue to perform or exercise all or any of the functions or powers delegated.
- (5) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing had been done by or to the principal officer of a public authority or a Minister and is taken to have been done by or to the principal officer or Minister.

Right to Information Act 2009
Act No. of

s. 25

Part 3 – Exempt Information

PART 3 – EXEMPT INFORMATION

Division 1 – Exemptions not subject to public interest test

25. Executive Council information

- (1) Information is exempt information if it is contained in –
 - (a) the official record of a deliberation or decision of the Governor or the Executive Council; or
 - (b) a record prepared for the purpose of being submitted to the Governor or the Executive Council for consideration; or
 - (c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or
 - (d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Governor or the Executive Council, other than a record by which a decision of the Governor or the Executive Council was officially published.
- (2) Subsection (1) does not include information solely because it is contained in a record that –
 - (a) was submitted to the Governor or Executive Council for consideration; or

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 26

(b) is proposed to be submitted to the Governor or Executive Council for consideration –

if the record was not brought into existence for submission to the Governor or Executive Council for consideration.

(3) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the Governor or Executive Council which has not been officially published.

26. Cabinet information

(1) Information is exempt information if it is contained in –

(a) the official record of a deliberation or decision of the Cabinet; or

(b) a record proposed by a Minister for the purpose of being submitted to the Cabinet for consideration; or

(c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or

(d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet was officially published.

Right to Information Act 2009
Act No. of

s. 27

Part 3 – Exempt Information

- (2) Subsection (1) ceases to apply after the end of the period of 10 years commencing on the date on which the information referred to in that subsection was first considered by the Cabinet at a meeting of the Cabinet.
- (3) Subsection (1) does not include information solely because it –
 - (a) was submitted to the Cabinet for consideration; or
 - (b) is proposed by a Minister to be submitted to the Cabinet for consideration –
if the information was not brought into existence for submission to the Cabinet for consideration.
- (4) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the Cabinet which has not been officially published.
- (5) Nothing in this section prevents the Premier from voluntarily disclosing information that is otherwise exempt information.
- (6) In this section –

“the Cabinet” includes a committee of the Cabinet.

27. Internal briefing information of a Minister

- (1) Information is exempt information if it consists of –

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 27

- (a) an opinion, advice or a recommendation prepared by an officer of a public authority or a Minister; or
- (b) a record of consultations or deliberations between officers of public authorities and Ministers –

in the course of, or for the purpose of, providing a Minister with a briefing in connection with the official business of a public authority, a Minister or the Government and in connection with the Minister's parliamentary duty.

- (2) Subsection (1) ceases to apply after the end of the period of 10 years commencing on the date of the creation of the information referred to in that subsection.
- (3) Subsection (1) does not include information solely because it –
 - (a) was submitted to a Minister for the purposes of a briefing; or
 - (b) is proposed to be submitted to a Minister for the purposes of a briefing –

if the information was not brought into existence for submission to a Minister for the purposes of a briefing.

- (4) Subsection (1) does not include purely factual information unless its disclosure would reveal the nature or content of the opinion, advice, recommendation, consultation or deliberations of the briefing.

Right to Information Act 2009
Act No. of

s. 28

Part 3 – Exempt Information

- (5) Nothing in this section prevents a Minister from voluntarily disclosing information that is otherwise exempt information.

28. Information not relating to official business

Information in the possession of a Minister is exempt information if it does not relate to the Minister's official business.

29. Information affecting national or state security, defence or international relations

- (1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –
- (a) endanger the security of the Commonwealth or any State or Territory; or
 - (b) endanger the defence of the Commonwealth; or
 - (c) adversely affect the international relations of the Commonwealth; or
 - (d) divulge information about the location of a dangerous substance or dangerous goods.

- (2) In this section –

“dangerous substance” and **“dangerous goods”** have the meaning given to those

expressions in the *Dangerous Substances (Safe Handling) Act 2005*.

30. Information relating to enforcement of the law

- (1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –
- (a) prejudice –
 - (i) the investigation of a breach or possible breach of the law; or
 - (ii) the enforcement or proper administration of the law in a particular instance; or
 - (iii) the fair trial of a person; or
 - (iv) the impartial adjudication of a particular case; or
 - (b) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
 - (c) disclose methods or procedures for preventing, detecting or investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the

Right to Information Act 2009
Act No. of

s. 30

Part 3 – Exempt Information

- effectiveness of those methods or procedures; or
- (d) endanger the life or physical, emotional or psychological safety of a person, or increase the likelihood of harassment or discrimination of a person; or
 - (e) disclose information gathered, collated or created for intelligence, including but not limited to databases of criminal intelligence, forensic testing or anonymous information from the public; or
 - (f) hinder, delay or prejudice an investigation of a breach or possible breach of the law which is not yet complete.
- (2) Subsection (1) includes information that –
- (a) reveals that the scope of a law enforcement investigation has exceeded a limit imposed by law; or
 - (b) reveals the use of an illegal method or procedure for preventing, detecting or investigating, or dealing with a matter arising out of, a breach or evasion of the law; or
 - (c) contains a general outline of the structure of a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 30

- (d) is a report on the degree of success achieved in a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or
- (e) is a report prepared in the course of a routine law enforcement inspection or investigation by a public authority with the function of enforcing and regulating compliance with a particular law other than the criminal law if the inspection or investigation is complete; or
- (f) is a report on a law enforcement investigation, if the substance of the report has been disclosed to the person or the body that is the subject of the investigation –

if it is contrary to the public interest that the information should be given under this Act.

- (3) The matters which must be considered in deciding if the disclosure of information under subsection (2) is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.
- (4) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of information under subsection (2) is contrary to the public interest.

31. Legal professional privilege

Information is exempt information if it is of such a nature that the information would be privileged from production in legal proceedings on the ground of legal professional privilege.

32. Information related to closed meetings of council

- (1) Information is exempt information if it is contained in –
 - (a) the official record of a closed meeting of a council; or
 - (b) information proposed by an officer of a council or a councillor for the purpose of being submitted to a closed meeting of a council for consideration if the officer or councillor has contributed to the origin, subject or contents of that record; or
 - (c) information that is a copy of, or a copy of part of, information referred to in paragraph (a) or (b); or
 - (d) information, the disclosure of which would involve the disclosure of a deliberation or decision of a council made at a closed meeting of the council, other than information by which a decision of the council was officially published.
- (2) Subsection (1) ceases to apply after the end of the period of 10 years commencing on the date

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 32

of the creation of the information referred to in that subsection.

- (3) Subsection (1) does not include information solely because it –
- (a) was submitted to the closed meeting of a council for consideration; or
 - (b) is proposed by an officer or councillor to be submitted to the closed meeting of a council for consideration –

if the information was not brought into existence for submission to the closed meeting for consideration, unless its disclosure would disclose a deliberation or decision of the closed meeting which has not been officially published.

- (4) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the closed meeting of a council which has not been officially published.
- (5) In this section –

“closed meeting of a council” means a meeting of a council which is formally closed to the public for a purpose specified in regulations made under the *Local Government Act 1993* and includes a closed meeting of a council committee.

Right to Information Act 2009
Act No. of

s. 33

Part 3 – Exempt Information

Division 2 – Exemptions subject to public interest test

33. Public interest test

- (1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.
- (2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.
- (3) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of the information is contrary to the public interest.

34. Information communicated by other jurisdictions

- (1) Information is exempt information if –
 - (a) its disclosure under this Act would prejudice relations between –
 - (i) two or more States; or
 - (ii) a State and the Commonwealth; or
 - (iii) the Commonwealth or a State and any other country; or
 - (b) the information was communicated in confidence to –

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 34

(i) a public authority; or

(ii) a person on behalf of the public authority –

by –

(iii) the Government or an authority of the Commonwealth, of another State or of another country; or

(iv) a person on behalf of the Government or an authority of the Commonwealth, of another State or of another country –

and its disclosure would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

(2) Information is exempt information if –

(a) the information was communicated to –

(i) a public authority; or

(ii) a person on behalf of the Government or public authority –

by –

(iii) the Government or an authority of the Commonwealth or of another State; or

(iv) a person on behalf of the Government or an authority of

Right to Information Act 2009
Act No. of

s. 35

Part 3 – Exempt Information

the Commonwealth or of another State; and

- (b) notice has been received from the Government or an authority of the Commonwealth or of the other State that the information is not required to be disclosed under, as the case may be, a corresponding law of the Commonwealth or of the other State.

- (3) In this section –

“corresponding law” means a law of the Commonwealth or of another State that is declared by the regulations to be a law that corresponds to this Act;

“State” includes the Northern Territory and the Australian Capital Territory.

35. Internal deliberative information

- (1) Information is exempt information if it consists of –
- (a) an opinion, advice or recommendation prepared by an officer of a public authority; or
 - (b) a record of consultations or deliberations between officers of public authorities; or
 - (c) a record of consultations or deliberations between officers of public authorities and Ministers –

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 36

in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government.

- (2) Subsection (1) does not include purely factual information.
- (3) Subsection (1) does not include –
 - (a) a final decision, order or ruling given in the exercise of an adjudicative function; or
 - (b) a reason which explains such a decision, order or ruling.
- (4) Subsection (1) ceases to apply after 10 years from the date of the creation of the information referred to in that subsection.

36. Personal information of person

- (1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13.
- (2) If –
 - (a) an application is made for information under this Act; and

Right to Information Act 2009
Act No. of

s. 36

Part 3 – Exempt Information

- (b) the information was provided to a public authority or Minister by a third party; and
- (c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of concern to the third party –

the principal officer or Minister is to, if practicable and before deciding whether the disclosure of the information under this Act should occur, by notice in writing to the third party –

- (d) notify that person that the public authority or Minister has received an application for the information; and
 - (e) state the nature of the information that has been applied for; and
 - (f) request that, within 15 working days from the date of the notice, the person provide his or her view as to whether the information should be provided.
- (3) If a public authority or Minister, after receipt of a person's view referred to in subsection (2)(f), decides to provide the information, the public authority or Minister must, by notice in writing given to that person, notify that person of the decision.
- (4) A notice under subsection (3) is to –

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 36

-
- (a) state the nature of the information to be provided; and
 - (b) if the decision was made on behalf of a public authority or Minister, state the name and designation of the person who made the decision; and
 - (c) inform the person to whom the notice is addressed of –
 - (i) that person’s right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application must be made.
- (5) A public authority or Minister must not provide the information referred to in a notice given to a person under subsection (3) –
- (a) until 10 working days have elapsed after the date of notification of that person; or
 - (b) if during those 10 working days the person applies under section 43 for a review of the decision, until that review determines that the information should be provided; or
 - (c) until 20 working days after notification of an adverse decision under section 43; or

Right to Information Act 2009
Act No. of

s. 37

Part 3 – Exempt Information

- (d) if during those 20 workings days the person applies for a review of the decision under section 44, until that review determines that the information should be provided.

37. Information relating to business affairs of third party

- (1) Information is exempt information if its disclosure under this Act would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application under section 13 (the “**third party**”) and –
 - (a) the information relates to trade secrets; or
 - (b) the disclosure of the information under this Act would be likely to expose the third party to competitive disadvantage.
- (2) If –
 - (a) an application is made for information under this Act; and
 - (b) the information was provided to a public authority or Minister by a third party; and
 - (c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 37

be of substantial concern to the third party –

the principal officer or Minister must, before deciding whether the disclosure of the information under this Act would be likely to expose the third party that provided the information to substantial harm to the third party's competitive position, by notice in writing given to the third party –

- (d) notify the third party that the public authority or Minister has received an application for the information; and
 - (e) state the nature of the information applied for; and
 - (f) request that, within 15 working days from the date of the notice, the third party provide the third party's view as to whether the information should be provided.
- (3) If a public authority or Minister, after receipt of a third party's view referred to in subsection (2)(f), decides to disclose the information, the public authority or Minister must, by notice in writing given to the third party, notify the third party of the decision.
- (4) A notice under subsection (3) is to –
- (a) state the nature of the information to be provided; and

Right to Information Act 2009
Act No. of

s. 37

Part 3 – Exempt Information

- (b) if the decision was made on behalf of a public authority, state the name and designation of the person who made the decision; and
- (c) inform the third party of –
 - (i) its right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application must be made.
- (5) A public authority or Minister must not provide the information referred to in a notice given to a third party under subsection (3) –
 - (a) until 10 working days have elapsed after the date of notification of the third party; or
 - (b) if during those 10 working days the third party applies for a review of the decision under section 43, until that review determines that the information should be provided; or
 - (c) until 20 working days after notification of an adverse decision under section 43; or
 - (d) if during those 20 workings days the person applies for a review of the

decision under section 44, until that review determines that the information should be provided.

38. Information relating to business affairs of public authority

Information is exempt information –

- (a) if it is –
 - (i) a trade secret of a public authority; or
 - (ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature that would, if disclosed under this Act, be likely to expose the public authority to competitive disadvantage; or
- (b) if it consists of the result of scientific or technical research undertaken by or on behalf of a public authority, and –
 - (i) the research could lead to a patentable invention; or
 - (ii) the disclosure of the results in an incomplete state would be likely to expose a business, commercial or financial undertaking unreasonably to disadvantage; or

Right to Information Act 2009
Act No. of

s. 39

Part 3 – Exempt Information

- (iii) the disclosure of the results before the completion of the research would be likely to expose the public authority or the person carrying out the research unreasonably to disadvantage; or
- (c) if it is contained in –
 - (i) an examination, a submission by a student in respect of an examination, an examiner's report or any such similar record; and
 - (ii) the use for which the record was prepared has not been completed.

39. Information obtained in confidence

- (1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or government to a public authority or Minister, and –
 - (a) the information would be exempt information if it were generated by a public authority or Minister; or
 - (b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 40

- (2) Subsection (1) does not include information that –
- (a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; and
 - (b) relates to trade secrets or other matters of a business, commercial or financial nature; and
 - (c) was provided to a public authority or Minister pursuant to a requirement of any law.

40. Information on procedures and criteria used in certain negotiations of public authority

Information is exempt information if it consists of instructions for the guidance of officers of a public authority on the processes to be followed or the criteria to be applied –

- (a) in negotiations, including financial, commercial and labour negotiations; or
- (b) in the execution of contracts; or
- (c) in the defence, prosecution and settlement of cases; or
- (d) in similar activities –

relating to the financial, property or personnel management and assessment interests of the Crown or of a public authority.

Right to Information Act 2009
Act No. of

s. 41

Part 3 – Exempt Information

41. Information likely to affect State economy

- (1) Information is exempt information if the information consists of details concerning any proposed action or inaction by the Parliament, the Government, a Minister or a public authority in the course of, or for the purpose of, managing the economy of the State or any part of the State and its disclosure is likely to –
 - (a) give any person an unfair advantage; or
 - (b) expose any person to an unfair disadvantage.
- (2) Information is exempt information if its disclosure would reasonably be expected to have a substantial adverse effect on the ability of the Government or any public authority to manage the economy of the State or any part of the State.

42. Information likely to affect cultural, heritage and natural resources of the State

Information is exempt information if its disclosure would be likely to –

- (a) threaten the survival of a rare or endangered species of flora or fauna; or
- (b) prejudice any measures being taken, or proposed to be taken, for the management or protection of a rare or endangered species of flora or fauna; or

Right to Information Act 2009
Act No. of

Part 3 – Exempt Information

s. 42

- (c) have an adverse effect on a site or area of scientific, cultural or historical significance; or
- (d) prejudice any measures being taken, or proposed to be taken, for the management or protection of a site or area of scientific, cultural or historical significance provided such measures would not themselves have any of the effects referred to in paragraph (a), (b) or (c).

PART 4 – REVIEW OF DECISIONS

43. Internal review

(1) If a decision in respect of an application made to a public authority for information has been made by a delegated officer, the applicant may, within 20 working days after notice of the decision is given to the applicant in accordance with section 22, apply to the principal officer of the public authority for a review of the decision.

(2) If –

(a) a decision to provide information relating to the personal affairs of a person referred to in section 36 has been made by a delegated officer; and

(b) notice of the decision has been given to an external party in accordance with section 36(3) –

the external party may within 10 working days of the receipt of the notice apply to the principal officer of the public authority for a review of the decision.

(3) If –

(a) a decision to provide information that is likely to expose an external party to competitive disadvantage has been made by a delegated officer under section 37; and

Right to Information Act 2009
Act No. of

Part 4 – Review of Decisions

s. 44

- (b) notice of the decision has been given to the external party in accordance with section 37(3) –

the external party may within 10 working days of the receipt of the notice apply to the principal officer of the public authority for a review of the decision.

- (4) If an application for a review of a decision is made to the principal officer in accordance with subsection (1), (2) or (3), the principal officer must as soon as practicable –
 - (a) review the decision and make a fresh decision; or
 - (b) arrange for a delegated officer, other than the delegated officer who made the decision, to review the decision and make a fresh decision.
- (5) A decision on a review under this section in respect of an application made under section 13 is to be given in the same manner as a decision in respect of the original application.

44. Application for external review

- (1) A person or external party may apply to the Ombudsman under this section for a review of a decision in relation to which section 43(1), (2) or (3) applies if –
 - (a) the person or external party has made an application for internal review under

Right to Information Act 2009
Act No. of

s. 45

Part 4 – Review of Decisions

section 43(1), (2) or (3) in relation to the decision; and

(b) either –

(i) the person or external party has been informed of the result of the review; or

(ii) 15 working days have elapsed since the application was made.

(2) The application referred to in subsection (1) must be made within 20 working days of an event referred to in subsection (1)(b).

45. Other applications for review

(1) A person who has applied for information in accordance with section 13 may also apply to the Ombudsman for a review of a decision if –

(a) the decision which may otherwise be the subject of an application for an internal review under section 43 has been made by a Minister or principal officer of a public authority and as a consequence the applicant cannot make an application under section 43; or

(b) a Minister or public authority has made a decision that the information requested was not in existence on the day the application was made; or

Right to Information Act 2009
Act No. of

Part 4 – Review of Decisions

s. 45

- (c) a Minister or public authority has made a decision to give access other than in the form requested by the applicant, except where to do so would breach copyright; or
 - (d) a Minister or public authority has decided that the information requested is not in the possession of the Minister or public authority; or
 - (e) following a decision being made by a Minister or public authority, the applicant believes, on reasonable grounds, that there is an insufficiency in the searching for the information by the Minister or public authority; or
 - (f) notice of a decision on an application under section 13 has not been received by the applicant and the period specified in, or calculated under, section 15 has elapsed.
- (2) If person has applied for information in accordance with section 13, another person may apply to the Ombudsman for review if –
- (a) a Minister or public authority has decided not to consult the person under section 36(2) or section 37(2) and the person believes that he or she is a person who was required to be consulted; or
 - (b) a decision has been made on a review under section 43 and a person, other than

Right to Information Act 2009
Act No. of

s. 46

Part 4 – Review of Decisions

the person who applied for the review, is adversely affected by the decision.

- (3) If a notice of a decision has been given under this Act, an application referred to in subsection (1) must be made within 20 working days of the day on which the applicant received notice of the decision.

46. Review where decisions delayed

(1) If –

- (a) an application has been made to a public authority or Minister under section 13; and
- (b) the period provided in section 15 has elapsed; and
- (c) notice of a decision on the application has not been received by the applicant –

the principal officer of the public authority or the Minister is, for the purpose of enabling an application to be made to the Ombudsman under section 45, to be taken to have made, on the last day of the relevant period, a decision refusing to grant the application.

(2) If –

- (a) by virtue of this section an application has been made to the Ombudsman under section 45 but the Ombudsman has not made a decision on the application; and

Right to Information Act 2009
Act No. of

Part 4 – Review of Decisions

s. 47

- (b) a decision, other than a decision to grant the request, is given by the public authority or Minister –

the Ombudsman may, at the request of the applicant, treat the application as extending to an application for review of that decision in accordance with section 45.

- (3) Before further considering an application made under section 45 by virtue of this section, the Ombudsman may, on the application of the Minister or principal officer of the public authority concerned, allow the Minister or public authority further time to deal with the request.
- (4) The Ombudsman may allow a public authority or a Minister further time in accordance with subsection (3), subject to such conditions as the Ombudsman thinks fit.

47. Powers of Ombudsman

- (1) The Ombudsman has the following powers when considering an application for review:
- (a) to decide on the form and content of an application for review;
 - (b) to decide on the process for dealing with the review;
 - (c) to examine witnesses;
 - (d) to administer an oath or affirmation before examination of a witness;

Right to Information Act 2009
Act No. of

s. 47

Part 4 – Review of Decisions

- (e) to direct a decision be made by a public authority or Minister if a decision has not been made within the time specified in, or calculated under, section 15;
- (f) to direct an internal review, if one has not already been completed;
- (g) to identify opportunities for early resolution, including conciliation;
- (h) to promote settlement of the review application;
- (i) to decide the parties involved in the review;
- (j) to make any enquiries necessary to determine the review or to decide if to proceed to review;
- (k) to decide any matter in relation to the original application for assessed disclosure that could be decided by the public authority or Minister to whom the application was made;
- (l) to decline an application for review that is vexatious, lacks substance or is not actively progressed by the applicant;
- (m) to decline to continue to review an application where the applicant fails to comply with the directions of the Ombudsman in connection with the progress of the review;

Right to Information Act 2009
Act No. of

Part 4 – Review of Decisions

s. 47

- (n) to direct a public authority to provide better reasons for a decision, within a period of 10 working days, including if necessary a schedule of information relevant to the application;
 - (o) to give direction on the procedure to be followed on review;
 - (p) to direct that his or her decision is to be implemented by the public authority within a period of 20 working days or such lesser period determined by the Ombudsman;
 - (q) to give directions to a party to a review, related to the conduct of the review.
- (2) The Ombudsman –
- (a) has full and free access to the records of a public authority or Minister that are related to an application for review and may require that access to be in a particular form; and
 - (b) may make application to the Supreme Court on a question of law.
- (3) The Ombudsman does not have power to investigate a matter under the *Ombudsman Act 1978* if that matter could be the subject of a review by the Ombudsman under this Part.
- (4) Where the Ombudsman is determining a matter brought by an applicant, the public authority or Minister concerned has the onus to show that the

Right to Information Act 2009
Act No. of

s. 48

Part 4 – Review of Decisions

information should not be disclosed and it is open to the Ombudsman to determine the outcome of a review on the basis that the onus is not discharged.

- (5) Where an external party seeks review of a decision by a public authority or Minister to disclose personal or business information of that external party, the external party has the onus to show that there are grounds that the information should not be disclosed and it is open to the Ombudsman to overturn a decision if that onus is not discharged.
- (6) The Ombudsman is to –
 - (a) use the powers in this section to resolve an application for review as soon as practicable after receipt of the application; and
 - (b) if an application cannot be resolved, ensure that his or her decision on an application for review is made as soon as practicable.

48. Decisions of Ombudsman

- (1) If the Ombudsman intends to make a decision in respect of a review –
 - (a) that is adverse to a public authority or Minister, the Ombudsman must make available a draft of that decision to the public authority or Minister and seek

Right to Information Act 2009
Act No. of

Part 4 – Review of Decisions

s. 48

input from that public authority or Minister before finalising the decision; or

- (b) in any other case, the Ombudsman may make available that decision to interested parties and seek input from the parties before finalising the decision.
- (2) Where a decision has been finalised, the Ombudsman may only reconsider it to correct an accidental mistake or omission.
 - (3) When a decision in respect of a review has been finalised, the Ombudsman is to provide a written copy of that decision and a statement of the reasons for the decision to each of the parties to the review.
 - (4) The Ombudsman –
 - (a) must not include in any decision or statement of reasons any information which is exempt information; and
 - (b) may not confirm or deny the existence of exempt information in any decision or statement of reasons.

PART 5 – MISCELLANEOUS

49. Guidelines and advice

- (1) The Ombudsman is to issue and maintain guidelines relating to –
 - (a) the process of disclosing information under all four types of information disclosure referred to in section 12; and
 - (b) the factors to be considered when determining to refuse an application under section 20; and
 - (c) any other matters he or she considers necessary.
- (2) The Ombudsman may, of his or her own motion or on the request of a Minister or principal officer, provide oral or written advice to a public authority or Minister on the operation of this Act.
- (3) The Ombudsman is to issue and maintain a manual related to the operation of this Act.
- (4) The Ombudsman is to make the guidelines and manual issued under this section available to the public.
- (5) The Ombudsman may publish a decision that he or she makes in respect of a review and the statement of reasons related to that decision.

50. Offences

- (1) A person must not deliberately obstruct or unduly influence a principal officer of a public authority, a Minister, a delegated officer or the Ombudsman and his or her staff in the exercise of the power to make decisions in accordance with this Act.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person must not deliberately fail to disclose information which is the subject of an application for an assessed disclosure of information, in the circumstances where the information is known to the person to exist, other than where non-disclosure is permitted in accordance with this Act or another Act.

Penalty: Fine not exceeding 50 penalty units.

51. Protection against actions for defamation or breach of confidence

- (1) Where information has been provided and the provision of that information –
- (a) was required or permitted by this Act; or
 - (b) was authorised by a Minister, a principal officer or a delegated officer in the *bona fide* belief that the information was required to be provided in accordance with this Act –

Right to Information Act 2009
Act No. of

s. 52

Part 5 – Miscellaneous

an action for defamation or breach of confidence does not lie against the Crown, a public authority, a Minister or an officer by reason of the provision or the authorising of the provision of that information, and an action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the provision of that information does not lie against the author of the information or any other person by reason of that author or other person having supplied the information to a public authority or Minister.

- (2) The provision of information (including exempt information) in consequence of a request made under this Act does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval for the publication of that information by the person to whom the information was provided.

52. Protection in respect of criminal offences under other Acts

Where information has been provided and the provision of that information –

- (a) was required or permitted by this Act; or
- (b) was authorised by a Minister or an officer having authority, in accordance with section 21, to make decisions in respect of requests for information, made in accordance with this Act, in the *bona*

fide belief that the information was required to be provided in accordance with this Act –

neither the person authorising the provision of the information nor any other person concerned in providing the information is guilty of a criminal offence by reason only of the provision or the authorising of the provision of the information.

53. Reporting

- (1) The Secretary of the Department must, as soon as practicable after the end of each financial year, prepare a report on the administration of this Act showing, in particular –
 - (a) the number of applications made under Part 2 and the public authorities or Ministers that received the applications; and
 - (b) the number of applications under Part 2 that were refused and the provisions of this Act under which they were refused; and
 - (c) the number of applications under this Act where the information requested was exempt information or part of the information was exempt information and the provision under which it was exempt; and

Right to Information Act 2009
Act No. of

s. 54

Part 5 – Miscellaneous

- (d) the number of applications for internal review under section 43 and the results of those applications; and
 - (e) a list of the Acts and sections of those Acts which exempt information or public authorities from the provisions of this Act; and
 - (f) the number of applications for review made to the Ombudsman under Part 4 and the results of those applications.
- (2) The Secretary of the Department must give the report prepared in accordance with subsection (1) to the Minister who must table it in both Houses of Parliament within 10 sitting-days of its receipt.
- (3) The Ombudsman is to provide a report to Parliament about the operation of this Act and any related matters he or she decides are relevant.
- (4) The report referred to in subsection (3) is to be contained in the annual report of the Ombudsman under section 30 of the *Ombudsman Act 1978*.

54. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

Right to Information Act 2009
Act No. of

Part 5 – Miscellaneous

s. 55

- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (4) The regulation may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

55. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

56. Legislation repealed

The legislation specified in Schedule 4 is repealed.

Right to Information Act 2009
Act No. of

s. 57

Part 5 – Miscellaneous

57. Legislation rescinded

The legislation specified in Schedule 5 is rescinded.

**SCHEDULE 1 – MATTERS RELEVANT TO
ASSESSMENT OF PUBLIC INTEREST**

Sections 30(3) and 33(2)

1. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:
 - (a) the general public need for government information to be accessible;
 - (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
 - (c) whether the disclosure would inform a person about the reasons for a decision;
 - (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
 - (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
 - (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
 - (g) whether the disclosure would enhance scrutiny of government administrative processes;

Right to Information Act 2009
Act No. of

sch. 1

- (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
- (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
- (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;
- (k) whether the disclosure would promote or harm the economic development of the State;
- (l) whether the disclosure would promote or harm the environment and or ecology of the State;
- (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
- (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;

Right to Information Act 2009
Act No. of

sch. 1

- (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;
- (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;
- (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
- (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;
- (t) whether the applicant is resident in Australia;
- (u) whether the information is wrong or inaccurate;
- (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;
- (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;
- (x) whether the information is information related to the business affairs of a person

Right to Information Act 2009
Act No. of

sch. 1

which is generally available to the competitors of that person;

- (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.

**SCHEDULE 2 – MATTERS IRRELEVANT TO
ASSESSMENT OF PUBLIC INTEREST**

Sections 30(4) and 33(3)

1. The following matters are irrelevant when assessing if disclosure of particular information would be contrary to the public interest:
 - (a) the seniority of the person who is involved in preparing the document or who is the subject of the document;
 - (b) that disclosure would confuse the public or that there is a possibility that the public might not readily understand any tentative quality of the information;
 - (c) that disclosure would cause a loss of confidence in the government;
 - (d) that disclosure might cause the applicant to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

**SCHEDULE 3 – MATTERS RELEVANT TO
ASSESSMENT OF REFUSING APPLICATION**

Sections 10(1)(b) and Section 19(1)

1. The following matters are matters that must be considered when assessing if the processing of an application for assessed disclosure of information would result in a substantial and unreasonable diversion of resources:
 - (a) the terms of the request, especially whether it is of a global kind or a generally expressed request, and in that regard whether the terms of the request offer a sufficiently precise description to permit the public authority or Minister, as a practical matter, to locate the document sought within a reasonable time and with the exercise of reasonable effort;
 - (b) whether the demonstrable importance of the document or documents to the applicant might be a factor in determining what in the particular case are a reasonable time and a reasonable effort;
 - (c) more generally whether the request is a reasonably manageable one, giving due, but not conclusive, regard to the size of the public authority or Minister and the extent of its resources available for dealing with applications;

Right to Information Act 2009
Act No. of

sch. 3

- (d) the public authority's or Minister's estimate as to the number of sources of information affected by the request, and by extension the volume of information and the amount of officer-time, and the salary cost;
- (e) the timelines binding the public authority or Minister;
- (f) the degree of certainty that can be attached to the estimate that is made as to sources of information affected and hours to be consumed, and in that regard importantly whether there is a real possibility that processing time might exceed to some degree the estimate first made;
- (g) the extent to which the applicant has made other applications to the public authority or Minister in respect of the same or similar information or has made other applications across government in respect of the same or similar information, and the extent to which the present application might have been adequately met by those previous applications;
- (h) the outcome of negotiations with the applicant in attempting to refine the application or extend the timeframe for processing the application;

Right to Information Act 2009
Act No. of

sch. 3

- (i) the extent of the resources available to deal with the specified application.

Right to Information Act 2009
Act No. of

sch. 4

SCHEDULE 4 – LEGISLATION REPEALED

Section 56

Freedom of Information Act 1991 (No. 22 of 1991)

Right to Information Act 2009
Act No. of

sch. 5

SCHEDULE 5 – LEGISLATION RESCINDED

Section 57

Freedom of Information Regulations 2001 (No. 39 of 2001)

Freedom of Information (Fees) Regulations 2004 (No. 130 of
2004)