Information Removed

From: 16(1)(a)(iv) Adversi [redacted]
Sent: Wednesday, 8 April 2020 3:53 PM
To: Out of Scope Parnell, Mark
Subject: FOI Bill
Attachments: (3) SIGNED Freedom of Information (Miscellaneous) Amendment Bill 2020.at.316.pdf; (4) MC revised DRAFT FOI Bill Second Reading Report (A183404) (A189682).docx; (5) Freedom of Information (Miscellaneous) Amendment Bill 2020.ex.02.pdf

Hi both,

The AG has just this second introduced the FOI bill!

I'm sending to you for info and for a briefing in the coming weeks if you like, and also attach the second reading which references the work you have done Mark.

Speak soon,

[redacted]

[redacted]16(1)(a)(iv) Adverse effect on agency functions
Senior Ministerial Advisor

Hon Vickie Chapman MP

Deputy Premier | Attorney-General
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Advance

SETTLED
PARLIAMENTARY COUNSEL

MESSAGE (YES/NO)
MONEY CLAUSE.....

South Australia

Freedom of Information (Miscellaneous) Amendment Bill 2020

A BILL FOR

An Act to amend the *Freedom of Information Act 1991*.

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Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Amendment provisions

Part 2—Amendment of *Freedom of Information Act 1991*

4 Substitution of sections 3 and 3A
3 Principles and objects of Act
5 Amendment of section 4—Interpretation
6 Insertion of sections 4A, 4B and 4C
4A Exempt agencies
4B Accredited FOI officers
4C When document is held by an agency
7 Amendment of section 8—Defunct and restructured agencies
8 Insertion of Part 1A

Part 1A—Proactive disclosure

8A Proactive disclosure principles
8B Proactive disclosure policy
9 Amendment of section 9—Publication of information concerning agencies
10 Substitution of section 13
13 Applications for access to agencies' documents
11 Amendment of section 14—Dealing with applications
12 Amendment of section 14A—Extension of time limit
13 Insertion of section 14B
14B Searches for documents held by agency
14 Amendment of section 17—Agencies may require advance deposits
15 Amendment of section 18—Agencies may refuse to deal with certain applications
16 Insertion of section 18A
18A Vexatious applicants
17 Amendment of section 19—Determination of applications
18 Insertion of section 19A
19A Determining when disclosure is contrary to public interest
19 Amendment of section 20—Refusal of access
20 Amendment of section 22—Forms of access
21 Amendment of section 23—Notices of determination
22 Amendment of section 25—Documents affecting inter-governmental or local governmental relations
23 Amendment of section 26—Documents containing personal information
24 Insertion of Part 3 Division 2A

Division 2A—Disclosure logs

28A Requirement for disclosure log
28B Required information about applications
28C Objections
25 Amendment of section 29—Internal review
26 Amendment of section 30—Right to apply for amendment of agencies' records
27 Substitution of section 31
31 Applications for amendment of agencies' records
28 Amendment of section 32—Dealing with applications
29 Amendment of section 34—Determination of applications
30 Amendment of section 35—Refusal to amend records

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31 Amendment of section 36—Notices of determination
32 Amendment of section 37—Notations to be added to records
33 Amendment of section 38—Internal review
34 Amendment of section 39—External review by Ombudsman
35 Amendment of section 40—Reviews by SACAT
36 Substitution of section 47
47 Service
37 Insertion of section 49A
49A Improper direction or influence
38 Substitution of sections 50 and 51
50 Protection in respect of liability
39 Amendment of section 53—Fees and charges
40 Amendment of section 55—Regulations
41 Amendment of Schedule 1—Exempt documents
42 Amendment of Schedule 2—Exempt agencies

Schedule 1—Transitional provisions

1 Application of amendments

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Freedom of Information (Miscellaneous) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Substitution of sections 3 and 3A

Sections 3 and 3A—delete the sections and substitute:

3—Principles and objects of Act

(1) This Act is based on the following principles:

(a) that representative democratic government is supported and enhanced by ensuring that proper public scrutiny of government activities occurs;

(b) that documents and information held by government agencies are a public resource;

(c) that, consistently with the above principles, members of the public should have an enforceable, presumptive right to access such documents and information, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy.

(2) The objects of this Act are—

(a) to authorise and encourage the proactive public release of government information by agencies; and

(b) to enable community scrutiny and review of government activities and otherwise promote openness in government; and

(c) to promote and enhance the accountability of government agencies; and

(d) to further the good government of the State.

(3) It is the intention of Parliament—

(a) that this Act be interpreted and applied so as to further the principles and objects of this Act; and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government documents and information.

5—Amendment of section 4—Interpretation

(1) Section 4(1), definition of ***accredited FOI officer***—delete the definition and substitute:

accredited FOI officer—see section 4B;

(2) Section 4(1), definition of ***agency***—delete "but does not include an exempt agency"

(3) Section 4(1)—after the definition of ***court*** insert:

disclosure log—see section 28A;

disclosure log policy means any directions issued by the Premier as a disclosure log policy in accordance with section 28A;

(4) Section 4(1), definition of ***document***—delete the definition and substitute:

document includes—

(a) anything in which information is stored or from which information may be reproduced; and

(b) information stored in an electronic form by means of a digital data storage device;

electronic backup system includes any electronic system that copies and archives data as a form of secondary storage of the data;

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(5) Section 4(1), definition of ***exempt agency***—delete the definition and substitute:

exempt agency—see section 4A;

(6) Section 4(1), definition of ***personal affairs***—delete the definition and substitute:

personal information, of a person, means information or an opinion about the person, where the person is reasonably identifiable (whether or not the information or opinion is true);

(7) Section 4(1), definition of ***principal officer***, (b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) in any other case—a person who is designated by regulation as principal officer of the agency or (if there is no such regulation relating to the agency) the head or chief executive officer (however designated) of the agency or the person of greatest seniority in the agency;

(8) Section 4(3) to (6)—delete subsections (3) to (6) (inclusive).

6—Insertion of sections 4A, 4B and 4C

After section 4 insert:

4A—Exempt agencies

(1) The agencies listed in Schedule 2 are exempt agencies to the extent described in that Schedule.

(2) The regulations may declare that an agency is an exempt agency, or is an exempt agency in respect of functions or classes of information specified in the regulation.

(3) If an agency takes over functions of, or receives information of, another agency that has ceased to exist but that was an exempt agency in respect of those functions or that class of information, the agency that takes over those functions or that receives that information will be taken to be an exempt agency in respect of those functions or classes of information.

(4) Subject to subsection (5), if an agency—

(a) is an exempt agency, this Act does not apply to the agency; or

(b) is an exempt agency in respect of particular functions or classes of information, this Act does not apply to the agency with respect to those functions or classes of information.

(5) A reference in Schedule 1 to an agency includes an exempt agency or an exempt agency in respect of particular functions or classes of information.

4B—Accredited FOI officers

(1) A person is an accredited FOI officer of an agency for the purposes of an application under this Act if the person—

(a) is the principal officer of the agency; or

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(b) subject to subsection (2), is an officer of the agency who has been designated as an accredited FOI officer of the agency by the principal officer of the agency for the purposes of such applications in accordance with this section.

(2) If the principal officer of an agency (***agency 1***) is satisfied that, due to the small size of the agency, it is not practicable for any officer of the agency to be the accredited FOI officer, the principal officer of agency 1 may enter into an agreement or arrangement with another agency (***agency 2***) whereby the principal officer of agency 2 would designate an officer of agency 2 as the accredited FOI officer of agency 1.

(3) The principal officer of an agency may only designate a person as an accredited FOI officer if—

(a) the person has completed training of a type approved by the Minister for an accredited FOI officer; and

(b) subject to subsection (4), the person—

(i) in the case of an agency that is an administrative unit of the Public Service—is an executive employee or an employee who usually reports to an executive employee; or

(ii) in the case of South Australia Police—

(A) is an officer in South Australia Police or is an employee who usually reports to an officer in South Australia Police; or

(B) is an executive employee or an employee who usually reports to an executive employee; or

(iii) in the case of any other agency—is employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer.

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(4) The principal officer of an agency may designate a person as an accredited FOI officer for the purposes of applications under Part 4 despite the fact that the person is not a person described in subsection (3)(b).

4C—When document is held by an agency

(1) A reference in this Act to documents held by or in the possession of an agency is, where the agency is a Minister, a reference only to such of those documents as relate to agencies for which the Minister is responsible.

(2) An agency is to be taken to hold a document at a particular time if the agency has a right of access to the document at that time.

(3) An agency is not to be taken to hold a document while the document is held by or in the possession of an exempt agency for which the agency is responsible.

(4) An agency will only be taken to hold a document stored in an electronic backup system if the document has otherwise been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the *State Records Act 1997* or contrary to the agency's established record management procedures.

(5) An agency that maintains an electronic backup system on behalf of other agencies is taken not to hold documents stored in the electronic backup system on behalf of those other agencies.

7—Amendment of section 8—Defunct and restructured agencies

Section 8—before subsection (1) insert:

(a1) Where an agency takes over some, but not all, of the functions of another agency, the responsibilities under this Act in respect of documents at any given time will lie with the agency that holds the documents at that time.

8—Insertion of Part 1A

After Part 1 insert:

Part 1A—Proactive disclosure

8A—Proactive disclosure principles

For the purposes of this Part, the ***proactive disclosure principles*** are as follows:

(a) documents and information held by government agencies are a public resource;

(b) government agencies are committed to being open and accountable, engaging with the community and encouraging public participation in the making of decisions, policies and laws;

(c) government agencies are committed to enhancing the flow of information from government agencies by releasing information, unless there is good reason not to, without the need for an access application under this Act;

(d) proactive publication of documents and information held by government agencies—

(i) puts information into the community faster and at lower cost; and

(ii) reduces agency time and resources spent processing individual access applications; and

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(iii) demonstrates a commitment to openness, accountability and transparency, which in turn may increase confidence in government.

8B—Proactive disclosure policy

(1) The Premier must, consistently with the proactive disclosure principles, issue a ***proactive disclosure policy*** directing agencies specified in the policy to publish information relating to the agency or held by the agency (other than personal information of a person).

(2) The proactive disclosure policy must be published in the Gazette and on a website.

(3) An agency to which the proactive disclosure policy applies must ensure that information is published in compliance with that policy.

9—Amendment of section 9—Publication of information concerning agencies

(1) Section 9(2)—delete "personal affairs" wherever occurring and substitute in each case:

personal information

(2) Section 9(2)(f)(i)—delete "designation of the officer or officers to whom" and substitute:

manner in which

(3) Section 9(2)(f)(ii)—delete "address or addresses at" and substitute:

manner in

(4) Section 9(3)(c)—delete "designation of the officer or officers to whom" and substitute:

manner in which

(5) Section 9(3)(d)—delete "address or addresses at which, and the times during which," and substitute:

manner in which

10—Substitution of section 13

Section 13—delete the section and substitute:

13—Applications for access to agencies' documents

(1) An application for access to an agency's document under this Act—

(a) must be in writing and contain such information as is reasonably necessary to enable the document to be identified; and

(b) must specify—

(i) a postal address in Australia; and

(ii) if the applicant is able to provide an email address for the purposes of section 47—that email address; and

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(c) must be accompanied by such application fee as may be prescribed; and

(d) may request that access to the document be given in a particular way; and

(e) must be lodged in a manner determined by the agency.

(2) If an application—

(a) is for access to documents received or produced by an agency, or part of an agency, during a specified period of time; and

(b) does not provide further identifying information about the documents,

the application will not be taken to contain sufficient information for the purposes of subsection (1)(a).

(3) If the application is for access to a document that contains personal information of the applicant, the application must indicate that fact and the applicant must provide with the application, or within 14 days after receipt of the application by the agency—

(a) evidence of identity for the applicant; and

(b) if an agent is acting for the applicant—evidence of the agent's authorisation to so act and evidence of identity for the agent.

11—Amendment of section 14—Dealing with applications

(1) Section 14(1)—after "the agency" insert:

and all determinations required to be made by the agency under this Act in relation to the application must be made by an accredited FOI officer of the agency

(2) Section 14(2)—delete "30 days" and substitute:

45 days

(3) Section 14—after subsection (2) insert:

(3) An application is not taken to be received by an agency for the purposes of subsection (2) unless it complies with the requirements of section 13(1) and, if applicable, section 13(3).

(4) An accredited FOI officer dealing with an application made after the commencement of this subsection must ensure that the applicant is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the time within which the application is required to be dealt with under this Act, the applicant's rights of review under this Act and the information required under section 28B.

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12—Amendment of section 14A—Extension of time limit

(1) Section 14A(1)—after "section 14 if" insert:

the applicant consents to an extension or if

(2) Section 14A(1)—after paragraph (b) insert:

or

(c) the agency is dealing with an unusually high number of applications under this Act and does not have sufficient resources to deal with the application within that period; or

(d) the agency is dealing with a number of related applications under this Act (whether involving the same applicant or applicants who are acting in concert in connection with those applications) and dealing with all of the related applications within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

13—Insertion of section 14B

After section 14A insert:

14B—Searches for documents held by agency

(1) The obligation of an agency to provide access to documents in response to an application is limited to documents held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the documents applied for that were held by the agency when the application was received.

(3) The agency's searches must be conducted using the most efficient means reasonably available to the agency.

(4) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of documents and information stored electronically.

(5) An agency is not required to search for documents in an electronic backup system unless the agency is taken to hold the documents in that system by virtue of section 4C(4).

(6) An agency is not required to undertake any search for documents in the circumstances set out in section 18(1).

14—Amendment of section 17—Agencies may require advance deposits

(1) Section 17(4)—delete subsection (4) and substitute:

(4) A request for an advance deposit must be accompanied by a notice that specifies—

(a) the basis on which the amount of the deposit has been calculated; and

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(b) the day on which the determination to request the advance deposit was made; and

(c) the designation of the officer by whom the determination was made; and

(d) contact details for the agency; and

(e) the rights of review conferred by this Act; and

(f) the procedures to be followed for the purpose of exercising those rights.

(2) Section 17—after subsection (6) insert:

(7) A request for an advance deposit (or for a further advance deposit) under this section is a determination for the purposes of this Act.

15—Amendment of section 18—Agencies may refuse to deal with certain applications

(1) Section 18(2)—after "its functions" insert:

(and the period during which the applicant is given an opportunity to amend the application is not to be taken into account in calculating the period within which the relevant application is to be dealt with).

(2) Section 18—after subsection (2) insert:

(2aa) For the avoidance of doubt, an agency will be taken to have endeavoured to assist an applicant in compliance with subsection (2) if the agency has contacted or attempted to contact the applicant for that purpose but the applicant has not responded or has not satisfactorily amended their application within 21 days or such longer period as the agency may allow in the circumstances.

(2ab) In deciding whether dealing with an application would substantially and unreasonably divert an agency's resources for the purposes of subsection (1), the agency is entitled to consider 2 or more applications (including any previous application) as the 1 application if the agency determines that the applications are related and are made by the same applicant or by applicants who are acting in concert in connection with those applications.

(2ac) If an agency determines that more than 40 hours of work is likely to be required in dealing with an application, it will be taken to be the case that the work involved in dealing with that application would substantially and unreasonably divert the agency's resources for the purposes of subsection (1).

(3) Section 18(2a)—after "the application is" insert:

frivolous or vexatious or is otherwise

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(4) Section 18—after subsection (2a) insert:

(2b) An agency may refuse to deal with, or to continue dealing with, with an application if the document to which the application relates is or has been the subject of a subpoena or other order of a court or tribunal for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order.

(2c) An agency may refuse to deal with, or to continue dealing with, an application if the applicant is prevented from making the application by a declaration of the Ombudsman under section 18A.

(2d) An agency may refuse to deal with, or to continue dealing with, an application if the agency has already decided a previous application for the documents concerned (or for documents that contain substantially the same information) made by the same applicant or by other applicants who are acting in concert with the applicant and there are no reasonable grounds for believing that the agency would make a different decision on the application.

16—Insertion of section 18A

After section 18 insert:

18A—Vexatious applicants

(1) The Ombudsman may, on the Ombudsman's own initiative or on the application of 1 or more agencies, declare in writing that a person is a vexatious applicant.

(2) The Ombudsman may make the declaration in relation to a person only if the Ombudsman is satisfied that—

(a) the person has repeatedly made applications under this Part or Part 5 (or both); and

(b) the repeatedly made applications are an abuse of the right of access or made for a purpose other than to obtain access to information.

(3) An applicant may be found to have repeatedly made applications for the purposes of subsection (2) whether the applications were made to the same agency or to different agencies.

(4) The Ombudsman must not make the declaration in relation to a person without giving the person an opportunity to make written or oral submissions.

(5) A copy of the declaration must be given to the person as soon as practicable.

(6) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.

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(7) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an application under this Part or Part 5 only with the written permission of the Ombudsman.

(8) The Ombudsman may publish—

(a) a declaration and the reasons for making the declaration; and

(b) a decision not to make a declaration and the reasons for the decision.

(9) The Ombudsman may publish the name of a person the subject of a declaration under this section when publishing the declaration and the reasons for making it.

17—Amendment of section 19—Determination of applications

Section 19(2)(b)—delete "30 days" and substitute:

45 days

18—Insertion of section 19A

After section 19 insert:

19A—Determining when disclosure is contrary to public interest

For the purposes of Schedule 1, disclosure of a document would, on balance, be contrary to the public interest if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

Note—

The following are some examples of public interest considerations in favour of disclosure:

(a) disclosure of the document could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance;

(b) disclosure of the document could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public;

(c) disclosure of the document could reasonably be expected to ensure effective oversight of the expenditure of public funds;

(d) the document is personal information of the person to whom it is to be disclosed;

(e) disclosure of the document could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency (or an officer of an agency).

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19—Amendment of section 20—Refusal of access

Section 20(1) and (2)—delete subsections (1) and (2) and substitute:

(1) An agency may refuse access to a document—

(a) if it is otherwise publicly available (whether or not availability of the document is by inspection only and whether or not availability is subject to a charge); or

(b) if access to the document has previously been given to the applicant; or

(c) if it is a document that—

(i) was not created or collated by the agency itself; and

(ii) genuinely forms part of library material held by the agency; or

(d) if, having taken all reasonable steps to find the document, the agency is satisfied that it is not possible to give access to the document because the document cannot be found or does not exist.

(2) An agency must refuse access to an exempt document referred to in Schedule 1 Part 1 and may refuse access to any other exempt document.

20—Amendment of section 22—Forms of access

Section 22—after subsection (3) insert:

(3a) If giving access to a document in accordance with an application will disclose to the applicant information that the agency reasonably considers is outside the scope of the application, the agency may delete the out of scope information from a copy of the document and give access to the document by giving access to a copy of the document with the out of scope information deleted.

21—Amendment of section 23—Notices of determination

(1) Section 23(1)—delete subsection (1) and substitute:

(1) An agency must notify an applicant in writing of its determination of the application.

(2) Section 23(2)(b)(i)—delete subparagraph (i) and substitute:

(i) the designation of the officer by whom the determination was made; and

(ia) contact details for the agency; and

(3) Section 23(2)—after paragraph (b) insert:

(ba) the documents (identified in accordance with any requirements prescribed by the regulations) to which the application relates that are held by the agency; and

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(4) Section 23—after subsection (2) insert:

(2a) If a determination is made by an officer at the direction of another officer, the notice must specify the designation of that other officer (ie the officer at whose direction the determination was made) for the purposes of subsection (2)(b)(i).

22—Amendment of section 25—Documents affecting inter-governmental or local governmental relations

(1) Section 25(1)—delete subsection (1) and substitute:

(1) This section applies to a document that contains matter concerning the affairs of a council (including a council constituted under a law of another State) or any government (whether of Australia or elsewhere).

(2) Section 25—delete "Government" wherever occurring and substitute in each case:

government

(3) Section 25(2a)—delete subsection (2a)

23—Amendment of section 26—Documents containing personal information

(1) Section 26(1)—delete subsection (1) and substitute:

(1) This section applies to a document if—

(a) it contains personal information of any person (whether living or dead); and

(b) the nature of the personal information is such that it might be an exempt document by virtue of Schedule 1 clause 6.

(2) Section 26—after subsection (3) insert:

(3a) The requirement to give notice and defer giving access to the document in accordance with subsection (3)(c) and (d) does not apply where the agency has taken reasonable steps to obtain the views of the person concerned but has been unable to locate the person.

(3) Section 26(4)(c)—delete "is of the opinion that disclosure of the information to the applicant may" and substitute:

has a reasonable expectation that disclosure of the information to the applicant will

(4) Section 26(4)—delete "it is sufficient compliance with this Act if access to the document is given to a registered medical practitioner nominated by the applicant" and substitute:

the agency may require that the applicant nominate a registered medical practitioner for the purposes of this section and it is sufficient compliance with this Act if access to the document is given to the registered medical practitioner so nominated

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(5) Section 26(5)—delete subsection (5) and substitute:

(5) If an applicant is required to nominate a registered medical practitioner for the purposes of subsection (4), the agency may defer providing access to the document until a registered medical practitioner is so nominated.

(6) A reference in this section to ***the person concerned*** is—

(a) in the case of a deceased person—a reference to the personal representative of that person or, if there is no personal representative, the closest relative of that person of or above the age of 18 years; or

(b) in the case of a child under the age of 16—a reference to a guardian of the child.

24—Insertion of Part 3 Division 2A

Part 3—after Division 2 insert:

Division 2A—Disclosure logs

28A—Requirement for disclosure log

(1) An agency to which a disclosure log policy applies must keep a record (a ***disclosure log***) of information about applications made to the agency under this Part that the agency determines by deciding to provide access (to some or all of the documents applied for), if the agency considers that such information may be of interest to other members of the public.

(2) A disclosure log must be kept and made available to the public in accordance with the relevant disclosure log policy.

(3) A disclosure log policy must be published in the Gazette and on a website.

(4) A disclosure log policy may deal with any matter relating to disclosure logs including, without limitation, record keeping requirements in relation to a disclosure log (and the making of decisions as to what information is to be included in a disclosure log), the period during which information is to be retained on a disclosure log, requirements as to the destruction of information and fees for access to a disclosure log in specified circumstances.

(5) A disclosure log policy may provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the principal officer of the agency or an accredited FOI officer.

28B—Required information about applications

(1) The information about an application that is required to be recorded in an agency's disclosure log is as follows:

(a) the date the application was decided;

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(b) a description of all documents to which access was provided in response to the application;

(c) a statement as to whether any of the documents are now available from the agency to other members of the public and (if so) how they can be accessed;

(d) any other information required to be kept in the disclosure log in accordance with the disclosure log policy.

(2) No details are required to be recorded in the agency's disclosure log—

(a) if no objection is made under section 28C to the inclusion of information in the log before the application for access to the documents is decided—until the application is decided; or

(b) if an objection is made under section 28C to the inclusion of information in the log before the application for access to the documents is decided—until the agency is entitled, under that section, to include the information in the log.

(3) An agency is not required to include in its disclosure log information about any application for a document—

(a) containing personal information about the applicant (the applicant being a natural person) or any other natural person; or

(b) in respect of which any factors particular to the applicant were otherwise a consideration in the agency's determination of the public interest in connection with the disclosure of the document to the applicant.

(4) An agency is not required to include in its disclosure log information about an application if the application has been determined to be exempt in accordance with any provisions in the disclosure log policy.

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28C—Objections

(1) Each of the following persons (an ***authorised objector***) can object to the inclusion in the agency's disclosure log of all or specified information concerning an application:

(a) the applicant;

(b) any other person with whom the agency has consulted (or is required to consult) under this Act before providing access to any document sought in the application.

(2) An objection can include reasons for the objection and, in the case of an objection by an applicant, can be made as part of the application or separately.

(3) The grounds on which an authorised objector is entitled to object to the inclusion of information in an agency's disclosure log are limited to any 1 or more of the following:

(a) the information includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative);

(b) the information concerns the authorised objector's business, commercial, professional or financial interests;

(c) the information concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector;

(d) the information concerns the affairs of a government or a council (and the authorised objector is that government or council).

(4) An agency's notice under section 14(4) (acknowledging receipt of an application) is to include the following statements about the inclusion of information in the agency's disclosure log (unless the agency considers it unlikely that information about the application will be included in the disclosure log):

(a) a statement that information concerning the application will be included in the agency's disclosure log and that the applicant can object to this;

(b) a statement about the rights of review under this Act of a determination by the agency to include information in its disclosure log despite the applicant's objection.

(5) If an applicant for access to a document has objected to the inclusion of information in the agency's disclosure log, the agency's notice of determination under section 23 must indicate—

(a) the agency's determination about whether the applicant was entitled to object; and

(b) if the agency has determined that the applicant was entitled to object—the agency's determination about whether to include the information in its disclosure log.

(6) If a person referred to in subsection (1)(b) has objected to the inclusion of information in the agency's disclosure log, the agency must, as soon as is reasonably practicable after the determination concerned is made (and, in any case, within 7 days after the determination is made), give the person a written notice that indicates—

(a) the agency's determination about whether the person was entitled to object; and

(b) if the agency has determined that the person was entitled to object—the agency's determination about whether to include the information in its disclosure log.

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(7) An agency that determines that an authorised objector was not entitled to object to the inclusion of information in the agency's disclosure log is entitled to immediately include the information in the disclosure log.

(8) An agency that determines that an authorised objector was entitled to object to the inclusion of information in the agency's disclosure log but determines to include the information despite the objection must not include the information while the objector is entitled to apply for a review of the agency's determination (ignoring any period that may be available by way of extension of time to apply for review), or while any review duly applied for is pending.

25—Amendment of section 29—Internal review

(1) Section 29(2)(e)—delete "at an office of" and substitute:

with

(2) Section 29—after subsection (2) insert:

(2a) For the avoidance of doubt, where the determination the subject of the review is a deemed determination under section 19(2), the application for review may be lodged at any time after the agency is to be taken to have determined the application in accordance with that provision (whether or not the applicant has been given notice of the deemed determination) and the time limitation specified in subsection (2)(e) only applies if the applicant is given notice of the deemed determination.

(2b) The principal officer of the agency must ensure that an applicant for review is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the operation of subsection (5) and the applicant's further rights of review under this Act.

(2c) An application for review under this section must not be determined by the same person who made the determination that is the subject of the review.

Released by ACD under the FOI Act 1991 (SA).

(3) Section 29(5)—delete "14 days" and substitute:

20 days (or within any extension of that period granted under subsection (5b))

(4) Section 29—after subsection (5) insert:

(5a) However, nothing prevents an agency from making a determination to give access to a document the subject of an application for review under this section after the period within which it was required to deal with the application for review (and any such determination is to be taken to have been made under this Act).

(5b) The principal officer of an agency that is dealing with an application for review may extend the period within which the application would otherwise have to be dealt with under subsection (5) (the ***usual period***)—

(a) by a further period of up to 14 days if satisfied that—

(i) the application relates to a large number of documents or necessitates additional searches through a large quantity of information and dealing with the application for review within the usual period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or

(ii) the application relates to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within the usual period; or

(iii) the agency is dealing with an unusually high number of applications under this section and does not have sufficient resources to deal with the application within the usual period; or

(iv) the agency is dealing with a number of related applications under this section (involving the same applicant or applicants who are acting in concert in connection with those applications) and dealing with all of the related applications within the usual period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or

(b) by a further period agreed with the applicant.

26—Amendment of section 30—Right to apply for amendment of agencies' records

Section 30(a)—delete "information concerning the person's personal affairs" and substitute:

personal information of the person

27—Substitution of section 31

Section 31—delete the section and substitute:

31—Applications for amendment of agencies' records

(1) An application for the amendment of an agency's records under this Act—

(a) must be in writing and contain such information as is reasonably necessary to enable the agency's document to which the applicant has been given access to be identified; and

(b) must specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out-of-date or misleading; and

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(c) if the applicant claims that the information contained in the document is incomplete or out-of-date—must be accompanied by such information as is necessary to complete the agency's records or to bring them up-to-date; and

(d) must specify—

(i) a postal address in Australia; and

(ii) if the applicant is able to provide an email address for the purposes of section 47—that email address; and

(e) must be lodged in a manner determined by the agency.

(2) The applicant must also provide with the application, or within 14 days after receipt of the application by the agency—

(a) evidence of identity for the applicant; and

(b) if an agent is acting for the applicant—evidence of the agent's authorisation to so act and evidence of identity for the agent.

28—Amendment of section 32—Dealing with applications

(1) Section 32(1)—after "the agency" insert:

and all determinations required to be made by the agency under this Act in relation to the application must be made by an accredited FOI officer of the agency

(2) Section 32(2)—delete "30 days" and substitute:

45 days

(3) Section 32—after subsection (2) insert:

(3) An accredited FOI officer dealing with an application must ensure that the applicant is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the time within which the application is required to be dealt with under this Act and the applicant's rights of review under this Act.

29—Amendment of section 34—Determination of applications

Section 34(2)—delete "30 days" and substitute:

45 days

30—Amendment of section 35—Refusal to amend records

(1) Section 35(a) and (b)—delete "it is satisfied that" wherever occurring

(2) Section 35—after paragraph (c) insert:

or

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(d) if the application is frivolous or vexatious or is not made in good faith; or

(e) if the agency has already decided a previous application made by the applicant that was substantially the same.

31—Amendment of section 36—Notices of determination

(1) Section 36(2)—delete "must specify"

(2) Section 36(2)(a)—before "the day" insert:

must specify

(3) Section 36(2)—after paragraph (a) insert:

(ab) must include a list of all of the documents (identified in accordance with any requirements prescribed by the regulations) to which the application relates that are held by the agency; and

(4) Section 36(2)(b)—after "is refused" insert:

, must specify

(5) Section 36(2)(b)(i)—delete subparagraph (i) and substitute:

(i) the designation of the officer by whom the determination was made; and

(ia) contact details for the agency; and

(6) Section 36—after subsection (2) insert:

(2a) If a determination is made by an officer at the direction of another officer, the notice must specify the designation of that other officer (ie the officer at whose direction the determination was made) for the purposes of subsection (2)(b)(i).

32—Amendment of section 37—Notations to be added to records

Section 37(1)—delete "at an office of" and substitute:

with

33—Amendment of section 38—Internal review

(1) Section 38(2)(d)—delete "at an office of" and substitute:

with

(2) Section 38—after subsection (2) insert:

(2a) For the avoidance of doubt, where the determination the subject of the review is a deemed determination under section 34(2), the application for review may be lodged at any time after the agency is to be taken to have determined the application in accordance with that provision (whether or not the applicant has been given notice of the deemed determination) and the time limitation specified in subsection (2)(d) only applies if the applicant is given notice of the deemed determination.

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(2b) The principal officer of the agency must ensure that an applicant for review is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the operation of subsection (4) and the applicant's further rights of review under this Act.

(2c) An application for review under this section must not be determined by the same person who made the determination that is the subject of the review.

(3) Section 38(4)—delete "14 days" and substitute:

20 days

34—Amendment of section 39—External review by Ombudsman

(1) Section 39(1), definition of ***relevant review authority***—delete the definition

(2) Section 39—delete "the relevant review authority" wherever occurring and substitute in each case:

the Ombudsman

(3) Section 39(4)—delete "The relevant review authority may, in its" and substitute:

The Ombudsman may, in the Ombudsman's

(4) Section 39(5)(b)—delete paragraph (b) and substitute:

(b) may, if it appears to the Ombudsman that the agency has failed to properly search for, sort or compile documents relevant to the review or to undertake consultations relevant to the review that should have been undertaken by the agency—

(i) require the agency to provide information relating to the manner in which it searched for, sorted or compiled the documents or undertook the consultations; or

(ii) require the agency to search for, sort or compile the documents or undertake the consultations; or

(ii) require officers of the agency to attend at a time and place specified by the Ombudsman for the purpose of sorting and compiling the documents or undertaking the consultations; and

(5) Section 39(8)—delete subsection (8) and substitute:

(8) If the Ombudsman has reason to believe that an agency or the applicant has a document relevant to the review, the Ombudsman may give to the agency or the applicant a written notice requiring them to produce the document to the Ombudsman in a manner specified in the notice and within a reasonable period specified in the notice.

(8a) No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of an investigation under this section, except an obligation or restriction designed to keep the identity of an informant secret.

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(6) Section 39(10) and (15)—delete "A relevant review authority" wherever occurring and substitute in each case:

The Ombudsman

(7) Section 39(11)—delete subsection (11) and substitute:

(11) On an application under this section, the Ombudsman may (based on the circumstances existing at the time of the review)—

(a) if the determination the subject of the review arose by operation of section 19(2) or 34(2) or the Ombudsman is satisfied that the determination was not properly made—refer the matter back to the agency for the making of a new determination (and any resulting new determination is to be taken to have been made under this Act); or

(b) in any case—confirm, vary or reverse the determination the subject of the review.

(8) Section 39(12)—delete "it thinks fit, offer, together with its reasons for its" and substitute:

the Ombudsman thinks fit, offer, together with the reasons for the

(9) Section 39(15)—delete "its reasons" and substitute:

the reasons

(10) Section 39(16) and (17)—delete "a relevant review authority" wherever occurring and substitute in each case:

the Ombudsman

(11) Section 39—after subsection (16) insert:

(16a) The Ombudsman may dismiss an application if the Ombudsman considers that the applicant has failed to comply with subsection (7) or with a notice under subsection (8).

(12) Section 39—after subsection (17) insert:

(18) Nothing prevents an agency from making a determination to give access to a document the subject of a review under this section (and any such determination is to be taken to have been made under this Act).

35—Amendment of section 40—Reviews by SACAT

(1) Section 40(1a) and (2)—delete subsections (1a) and (2) and substitute:

(1a) However, a review by SACAT under subsection (1) may only relate to—

(a) a determination that a document was not an exempt document; or

(b) a question of law (in which case the application for review must be referred to a Presidential member of the Tribunal under section 26 of the *South Australian Civil and Administrative Tribunal Act 2013*).

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(2) A person (other than an agency) who is aggrieved by a determination—

(a) made on a review under Division 1 (other than a determination relating to the sufficiency of the agency's searches for documents); or

(b) made by the Ombudsman under section 18A,

may apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by SACAT.

(2) Section 40(4) to (6)—delete subsections (4) to (6) (inclusive) and substitute:

(4) In proceedings under subsection (1) or (2)(a)—

(a) the agency will be a party to the proceedings; and

(b) the Ombudsman will not be a party to the proceedings but is entitled to be notified of the proceedings; and

(c) SACAT may, of its own motion or on application by the Ombudsman, require the Ombudsman to make written submissions to SACAT in relation to the proceedings.

(3) Section 40(7)—delete "this section" and substitute:

subsection (1) or (2)(a)

(4) Section 40—after subsection (7) insert:

(7a) Nothing prevents an agency from making a determination to give access to a document the subject of proceedings under subsection (1) or (2)(a) (and any such determination is to be taken to have been made under this Act).

36—Substitution of section 47

Section 47—delete the section and substitute:

47—Service

A notice, determination or other document required or authorised to be given or served under this Act may be given or served personally, by post or by transmitting it by email to an email address provided by the intended recipient for the purposes of this section (in which case the notice, determination or document will be taken to have been given or served at the time of transmission).

Released by ACD under the FOI Act 1991 (SA).

37—Insertion of section 49A

After section 49 insert:

49A—Improper direction or influence

A person must not—

(a) direct an accredited FOI officer to make a decision or determination for the purposes of this Act that the person knows, or ought reasonably to know, is not a decision or determination that the officer should, in the circumstances, make; or

(b) improperly influence (whether directly or indirectly) the making of a decision or determination for the purposes of this Act by an accredited FOI officer.

Maximum penalty: $5 000.

38—Substitution of sections 50 and 51

Sections 50 and 51—delete the sections and substitute:

50—Protection in respect of liability

(1) This section applies to the following acts:

(a) the publishing of information relating to an agency or held by an agency (other than personal information of a person) if the person publishing the information honestly believes that a proactive disclosure policy under Part 1A permits or requires the information to be published;

(b) the making of a determination if the person making the determination honestly believes that this Act permits or requires the determination to be made;

(c) the giving of access to a document pursuant to a determination referred to in paragraph (b);

(d) the publishing of any information in accordance with section 18A;

(e) the disclosure of information in a disclosure log if the person disclosing the information honestly believes that this Act permits or requires the disclosure to be made.

(2) If this section applies to an act—

(a) no action for defamation or breach of confidence lies against the Crown, an agency or an officer of an agency, by reason of the act; and

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(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the act lies against the author of the information or document or any other person by reason of the author or other person having supplied the information or document to an agency or Minister; and

(c) the act does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information or document by another person; and

(d) no offence is committed by an agency or an officer of an agency merely by reason of the act.

39—Amendment of section 53—Fees and charges

(1) Section 53(2aa)—delete subsection (2aa) and substitute:

(2aa) A fee or charge (other than an application fee prescribed under section 13(1)(c)) can only be required by an agency under this Act in respect of the costs to the agency of finding, retrieving, viewing, sorting, compiling and copying documents, and removing exempt matter from documents, as may be necessary for the proper exercise of a function under this Act and undertaking any consultations required by this Act in relation to the exercise of that function.

(2) Section 53—after subsection (4) insert:

(4a) If section 19(2) applies in relation to an application, the agency is, in respect of the application, entitled to any application fee prescribed under section 13(1)(c) but may not require the payment of any other fee or charge for dealing with the application.

40—Amendment of section 55—Regulations

Section 55—after its present contents (now to be designated as subsection (1)) insert:

(2) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another person.

Released by AGD under the FOI Act 1991 (SA).

41—Amendment of Schedule 1—Exempt documents

(1) Schedule 1, clauses 1 and 2—delete clauses 1 and 2 and substitute:

1—Cabinet and Executive Council documents

(1) A document is an exempt document—

(a) if it is a document that has been specifically prepared for submission to Cabinet or Executive Council (whether or not it has been so submitted); or

(b) if it is a preliminary draft of a document referred to in paragraph (a); or

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

(d) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet or Executive Council; or

(e) if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted, to Cabinet or Executive Council.

(2) The following are not exempt documents by virtue of this clause:

(a) a document that merely consists of—

(i) matter that appears in an instrument that has been made or approved by the Governor and that has been officially published (either in the Gazette or elsewhere); or

(ii) factual or statistical material (including public opinion polling) that does not disclose information concerning any deliberation or advice of Cabinet or Executive Council or relate directly to a contract or other commercial transaction that is still being negotiated;

(b) a document that is attached to a document described in a paragraph of subclause (1) but that does not, itself, fall within any of the paragraphs in subclause (1);

(c) a document that has been submitted to Cabinet by a Minister if—

(i) a Minister has certified that Cabinet have approved the document as a document to which access may be given under this Act; or

(ii) 10 years have passed since the end of the calendar year in which the document was submitted to Cabinet and the document is not a prescribed document.

Released by AGD under the FOI Act 1991 (SA)

(3) In this clause—

(a) a reference to ***Cabinet*** includes a reference to a committee of Cabinet and to a subcommittee of a committee of Cabinet; and

(b) a ***prescribed document*** (in subclause (2)(c)(ii)) means—

(i) a document that accompanies a document that has been specifically prepared for submission to Cabinet (a ***submission document***) and that consists of comments on the submission document by an agency other than the Minister who submitted the submission document to Cabinet; or

(ii) a document that is submitted only for the purpose of supporting strategic discussion and that does not contain any recommendations for Cabinet.

(2) Schedule 1, clause 4(2)(a)—after subparagraph (vi) insert:

(vii) to put at risk—

(a) any endangered, vulnerable or rare species (within the meaning of the *National Parks and Wildlife Act 1972*) or any threatened species or threatened ecological community (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth); or

(b) rare items of cultural or scientific importance; and

(3) Schedule 1, clause 4(3)—delete "has been created or is held by the State Intelligence Section of South Australia Police" and substitute:

the former State Intelligence Section of South Australia Police or has been created or is held by the State Intelligence Branch of South Australia Police

(4) Schedule 1, clause 6, heading—delete "affecting personal affairs" and substitute:

containing personal information

(5) Schedule 1, clause 6(1)—delete "information concerning the personal affairs" and substitute:

personal information

(6) Schedule 1, clause 6(2)—delete subclause (2)

(7) Schedule 1, clause 6(3)—delete "or (2)"

(8) Schedule 1, clause 13(6)—delete ", as soon as practicable, notify the Minister administering this Act, in writing, of that fact" and substitute:

notify the Minister administering this Act, in writing, of that fact within the period determined by that Minister

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(9) Schedule 1, clause 16—after subclause (1) insert:

(1a) A document is an exempt document if it was prepared for the purposes of an audit, examination or other statutory function required to be undertaken by the Auditor-General.

(1b) A document is not an exempt document by virtue of subclause (1a) if—

(a) the document is identified by the Auditor-General as a Management letter or an agency's response to a Management letter; and

(b) the Auditor-General has reported to the Parliament in respect of the period to which the Management letter or response relates.

(10) Schedule 1, clause 16(2)—delete subclause (2)

42—Amendment of Schedule 2—Exempt agencies

(1) Schedule 2—after paragraph (k) insert:

(kaa) the Office of Parliamentary Counsel in relation to information that would be privileged from production in legal proceedings on the ground of legal professional privilege;

(2) Schedule 2, paragraph (n)—delete "South Australian Superannuation Fund Investment Trust" and substitute:

Superannuation Funds Management Corporation of South Australia

(3) Schedule 2, paragraph (p)(iii)—delete subparagraph (iii) and substitute:

(iii) the former Operations Intelligence Section; or

(iiia) the State Protective Security Branch (or a body substituted for the State Protective Security Branch); or

Schedule 1—Transitional provisions

1—Application of amendments

(1) Subject to this clause, an amendment to the *Freedom of Information Act 1991* (the ***principal Act***) effected by a provision of this Act applies in relation to an application under the principal Act, or review proceedings relating to an application under the principal Act, if the application or proceedings are determined after the commencement of that provision (whether the application was lodged before or after that commencement).

(2) Part 3 Division 2A of the principal Act (as amended by this Act) only applies to an application made after the commencement of section 11(3) of this Act.

(3) The amendments to the principal Act effected by section 41(6) and (10) of this Act only apply to an application made after the commencement of those subsections.

Released by AGD under the FOI Act 1991 (SA).

1b

Freedom of Information (Miscellaneous) Amendment Bill 2020

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Substitution of sections 3 and 3A

This clause replaces the current provisions setting out objects and principles of administration with a new statement of principles and objects.

5—Amendment of section 4—Interpretation

This clause amends various definitions for the purposes of the measure.

6—Insertion of sections 4A, 4B and 4C

This clause inserts new provisions as follows:

4A—Exempt agencies

This section links to the definition of ***exempt agency*** in section 4.

4B—Accredited FOI officers

This section provides for accredited FOI officers and includes similar requirements to those currently specified in the definition of accredited FOI officer in section 4 of the Act but allows for small agencies to use the accredited FOI officer of another agency (where it is not practicable for the agency to have its own officer) and also allows a person to be designated as an accredited FOI officer for the purpose of dealing with applications for the amendment of records under Part 4 of the Act despite the fact that the person does not meet certain requirements relating to seniority.

4C—When document is held by an agency

This section sets out when an agency will be taken to hold a document for the purposes of the Act and in particular deals with documents contained in electronic backup systems.

Released by AGD under the FOI Act 1991 (SA).

7—Amendment of section 8—Defunct and restructured agencies

Section 8 is amended to provide that where an agency takes over some, but not all, of the functions of another agency, the responsibilities under the Act in respect of documents at any given time will lie with the agency that holds the documents at that time.

8—Insertion of Part 1A

This clause inserts a new Part setting out proactive disclosure principles and requiring the Premier to issue a ***proactive disclosure policy*** (consistently with the proactive disclosure principles) directing specified agencies to publish information relating to the agency or held by the agency (other than personal information of a person).

9—Amendment of section 9—Publication of information concerning agencies

This clause amends section 9 to reflect a change in terminology from records concerning "personal affairs" to records concerning "personal information" and to remove requirements to specify the "designation" of a person to whom inquiries should be made and to specify the "address" at which applications should be lodged and to replace those with more generic requirements to specify the "manner" in which inquiries should be made and the "manner" in which applications should be lodged.

10—Substitution of section 13

This clause substitutes a new section as follows:

13—Applications for access to agencies' documents

This section updates the provision on applications to allow for electronic forms of communication and also—

- makes it clear that applications that only identify the documents sought by date range will be taken to provide insufficient identifying information;
- sets out special identification requirements for applications for access to documents concerning personal information of the applicant.

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11—Amendment of section 14—Dealing with applications

Section 14 is amended to ensure that all determinations made in relation to an application are made by the accredited FOI officer, to clarify that an application is not taken to be received by an agency unless it complies with the requirements of section 13(1), to require certain information be given to applicants and to extend the time within which an application must be dealt with from the current 30 days to 45 days.

12—Amendment of section 14A—Extension of time limit

Section 14A is amended to allow (in addition to the existing grounds for an extension of time) an extension of time to be granted if the applicant consents to it or where the agency is dealing with an unusually high number of applications or where the agency is dealing with a number of related applications.

13—Insertion of section 14B

This clause inserts a new section dealing with an agency's obligation to undertake reasonable searches for documents that are the subject of an application.

14—Amendment of section 17—Agencies may require advance deposits

This clause requires additional information to be provided in a notice accompanying a request for an advance deposit and specifies that a request for an advance deposit is a determination for the purposes of the Act.

15—Amendment of section 18—Agencies may refuse to deal with certain applications

This clause provides a number of amendments aimed at clarifying the provision allowing an agency to refuse to deal with an application.

16—Insertion of section 18A

This clause inserts a new section empowering the Ombudsman, on the Ombudsman's own initiative or on the application of 1 or more agencies, to declare that a person is a vexatious applicant where—

- the person has repeatedly made applications for access or external review (or both); and
- the repeatedly made applications are an abuse of the right of access or made for a purpose other than to obtain access to information.

A determination under the provision will be reviewable by SACAT.

17—Amendment of section 19—Determination of applications

This amendment is consequential to the amendment to section 14 extending the time within which an application must be dealt with from the current 30 days to 45 days.

18—Insertion of section 19A

Various provisions of Schedule 1 provide that a document is exempt from disclosure if certain preconditions are satisfied and disclosure of the document would, on balance, be contrary to the public interest. Proposed new section 19A provides that for the purposes of that Schedule, disclosure of a document would, on balance, be contrary to the public interest if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

19—Amendment of section 20—Refusal of access

This clause amends the grounds for refusing access to a document to clarify that access may be refused if access to the document has previously been given to the applicant or if the document cannot be found or does not exist and to remove the current reference to documents created before 1 January 1987. In addition, proposed subsection (2) provides that an agency must refuse access to an exempt document referred to in Schedule 1 Part 1 (the restricted documents) and may refuse access to any other exempt document.

Released by AGD under the FOI Act 1991 (SA).

20—Amendment of section 22—Forms of access

Section 22 is amended to allow an agency delete out of scope information from a copy of a document provided to an applicant.

21—Amendment of section 23—Notices of determination

This clause makes minor changes to the information to be provided in a notice of determination. The name of the officer that made the determination will not have to be provided but the notice will have to state a designation for the officer who made (or directed) the determination and provide contact details for the agency. Also the notice must specify (in accordance with the regulations) the documents to which the application relates that are held by the agency.

22—Amendment of section 25—Documents affecting inter-governmental or local governmental relations

This clause applies section 25 to a document that contains matter concerning the affairs of any council (including one constituted under a law of another State) or any government (whether of Australia or elsewhere).

23—Amendment of section 26—Documents containing personal information

This clause amends section 26 to:

- change references to information concerning the "personal affairs" of a person to references to "personal information" of a person;
- only require consultation with the person where the nature of the personal information is such that it might be an exempt document by virtue of Schedule 1 clause 6;
- disapply the notice requirement where you are unable to locate the person;
- allow an agency to require that the applicant nominate a medical practitioner who will be given access to the information where the agency has a reasonable expectation that disclosure of the information to the applicant would have an adverse effect on the physical or mental health, or the emotional state, of the applicant;
- provide for the situation where the personal information relates to a child.

24—Insertion of Part 3 Division 2A

This clause inserts a new Division on disclosure logs as follows:

Division 2A—Disclosure logs

28A—Requirement for disclosure log

Agencies will be required to keep a disclosure log (in accordance with requirements specified in the section) of information about applications made to the agency where access to documents is provided if the agency considers that such information may be of interest to other members of the public.

Released by AGD, under the FOI Act 1991 (SA).

28B—Required information about applications

This section sets out information that is to be recorded in a disclosure log.

28C—Objections

This section provides for the making of objections to the inclusion of information concerning an application in an agency's disclosure log.

25—Amendment of section 29—Internal review

This clause:

- clarifies when an application for review of a deemed determination can be lodged;
- requires written confirmation of the receipt of an application for review;
- specifies that a review cannot be conducted by the person who made the determination that is the subject of the review;
- changes the period for a deemed confirmation on review from 14 days to 20 days, with the possibility of an extension of that period in specified circumstances;
- makes it clear that nothing prevents the agency making a determination to give access to a document the subject of an application for a review after the period within which the agency was required to deal with the application for review (and any such determination is to be taken to have been made under the Act).

26—Amendment of section 30—Right to apply for amendment of agencies' records

This clause amends section 30 to reflect the change in terminology from information concerning "personal affairs" to "personal information".

27—Substitution of section 31

This clause substitutes section 31 as follows:

31—Applications for amendment of agencies' records

This section updates the provision on applications to allow for electronic forms of communication and also sets out identification requirements.

28—Amendment of section 32—Dealing with applications

Section 32 is amended to ensure that all determinations made in relation to an application are made by the accredited FOI officer, to require certain information be given to applicants and to extend the time within which an application must be dealt with from the current 30 days to 45 days.

29—Amendment of section 34—Determination of applications

This amendment is consequential to the amendment to section 32 extending the time within which an application must be dealt with from the current 30 days to 45 days.

Released by AGD under the FOI Act 1991 (SA).

30—Amendment of section 35—Refusal to amend records

This clause amends section 35 to make the existing grounds for refusing a request to amend records more objective, to add as grounds for refusal, that the application is frivolous or vexatious or is not made in good faith or that the agency has already decided a previous application made by the applicant that was substantially the same.

31—Amendment of section 36—Notices of determination

This clause makes minor changes to the information to be provided in a notice of determination. The name of the officer that made the determination will not have to be provided but the notice will have to state a designation for the officer who made (or directed) the determination and provide contact details for the agency. Also the notice must specify (in accordance with the regulations) the documents to which the application relates that are held by the agency.

32—Amendment of section 37—Notations to be added to records

A minor amendment is made to section 37 to allow for electronic lodgement of a notice.

33—Amendment of section 38—Internal review

This clause:

- allows for electronic lodgement of an application for internal review;
- clarifies when an application for review of a deemed determination can be lodged;
- requires written confirmation of the receipt of an application for review;
- specifies that a review cannot be conducted by the person who made the determination that is the subject of the review;
- changes the period for a deemed confirmation on review from 14 days to 20 days.

34—Amendment of section 39—External review by Ombudsman

This clause makes changes to reflect the fact that the Ombudsman is now the only applicable review authority under the provision and gives the Ombudsman an additional power to require an agency to provide information relating to the manner in which it searched for, sorted or compiled documents or undertook consultations.

35—Amendment of section 40—Reviews by SACAT

These amendments:

- allow an agency to seek a SACAT review of a determination by the Ombudsman that a document was not an exempt document (in addition to the existing right of review on a question of law);
- allow persons other than an agency to seek a SACAT review of a determination by the Ombudsman on a review or under new section 18A;
- require the Ombudsman to be notified of review proceedings (even though the Ombudsman is not a party to the proceedings) and to make written submissions to SACAT on application or at the request of SACAT;

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- clarify that nothing prevents an agency from making a determination to give access to a document the subject of review proceedings.

36—Substitution of section 47

A new service provision allows for service of any notices and documents under the Act (eg a copy of a determination by the Ombudsman under proposed new section 18A) and allows for service by email if an email address for service is provided.

37—Insertion of section 49A

This clause creates a new offence of directing an accredited FOI officer to make a decision or determination that the person knows, or ought reasonably to know, is not one that the officer should make or improperly influencing the making of a decision or determination by an accredited FOI officer. The maximum fine is $5 000.

38—Substitution of sections 50 and 51

This clause substitutes a new provision granting protecting from liability in respect of various new functions to be carried out under the measure. The existing provisions of the Act are limited to granting access to documents but the new provision will extend to things such as publishing in accordance with new section 18A and disclosure of information in a disclosure log.

39—Amendment of section 53—Fees and charges

This clause makes some clarifications to the fees and charges provision.

40—Amendment of section 55—Regulations

This clause brings the general regulation making power into line with more recent drafting practice.

41—Amendment of Schedule 1—Exempt documents

This clause amends Schedule 1 (exempt documents) to:

- replace the existing exemptions relating to Cabinet and Executive Council documents;
- provide an exemption for documents that would put at risk any endangered, vulnerable or rare species or any threatened species or threatened ecological community or rare items of cultural or scientific importance;
- delete unnecessary exemptions;
- provide an exemption for documents prepared for the purposes of an audit, examination or other statutory function required to be undertaken by the Auditor-General;
- make other minor miscellaneous amendments.

42—Amendment of Schedule 2—Exempt agencies

Schedule 2 is sought to be amended:

- to make the Office of Parliamentary Counsel an exempt agency in relation to information that would be privileged from production in legal proceedings on the ground of legal professional privilege. Such information is exempt under

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Schedule 1 in any case but, if the information is only subject to a Schedule 1 exemption and a request for access is made, OPC is still required to undertake searches for the documents and compile the documents for the Departmental accredited FOI officer to enable them to determine the application. This arrangement is inappropriate where the documents include privileged documents of non-government members of Parliament;

- to update some references.

Schedule 1—Transitional provisions

1—Application of amendments

The Schedule sets out transitional provisions.

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Information Removed

2

From: 16(1)(a)(iv) Adverse effe [redacted]
Sent: Wednesday, 15 April 2020 9:43 AM
To: Maher Office; [redacted] Florey EO; Frome EO; Mount Gambier EO
Subject: Briefing: Freedom of Information (Miscellaneous) Amendment Bill 2020
Attachments: Freedom of Information (Miscellaneous) Amendment Bill 2020.ex.02.pdf; SIGNED Freedom of Information (Miscellaneous) Amendment Bill 2020.at.316.pdf

Importance: High

Good morning

We would like to offer a briefing on the **Freedom of Information (Miscellaneous) Amendment Bill 2020** *via Microsoft Teams*.

If your office would like a briefing on the bill in the coming weeks, please advise via return email and final details can be confirmed with the relevant advisor & departmental legal officer.

Availability is relatively flexible across Tuesdays, Wednesdays & Thursdays.

Happy to discuss ☺

Kind regards,

[redacted] 16(1)(a)(iv) Adverse effect on
Cabinet & Parliamentary Liaison Officer
Office of the Hon Vickie Chapman MP | Deputy Premier & Attorney-General
L11, 45 Pirie Street, Adelaide SA 5000 ☎ (08) 16(1)(a)(iv) Adverse effe | 16(1)(a)(iv) Adverse effect on agency functions

Government of South Australia

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South Australia

Freedom of Information (Miscellaneous) Amendment Bill 2020

A BILL FOR

An Act to amend the *Freedom of Information Act 1991*.

Released by AGD, under the FOI Act 1991 (SA).

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Amendment provisions

Part 2—Amendment of *Freedom of Information Act 1991*

4 Substitution of sections 3 and 3A
3 Principles and objects of Act
5 Amendment of section 4—Interpretation
6 Insertion of sections 4A, 4B and 4C
4A Exempt agencies
4B Accredited FOI officers
4C When document is held by an agency
7 Amendment of section 8—Defunct and restructured agencies
8 Insertion of Part 1A

Part 1A—Proactive disclosure

8A Proactive disclosure principles
8B Proactive disclosure policy
9 Amendment of section 9—Publication of information concerning agencies
10 Substitution of section 13
13 Applications for access to agencies' documents
11 Amendment of section 14—Dealing with applications
12 Amendment of section 14A—Extension of time limit
13 Insertion of section 14B
14B Searches for documents held by agency
14 Amendment of section 17—Agencies may require advance deposits
15 Amendment of section 18—Agencies may refuse to deal with certain applications
16 Insertion of section 18A
18A Vexatious applicants
17 Amendment of section 19—Determination of applications
18 Insertion of section 19A
19A Determining when disclosure is contrary to public interest
19 Amendment of section 20—Refusal of access
20 Amendment of section 22—Forms of access
21 Amendment of section 23—Notices of determination
22 Amendment of section 25—Documents affecting inter-governmental or local governmental relations
23 Amendment of section 26—Documents containing personal information
24 Insertion of Part 3 Division 2A

Division 2A—Disclosure logs

28A Requirement for disclosure log
28B Required information about applications
28C Objections
25 Amendment of section 29—Internal review
26 Amendment of section 30—Right to apply for amendment of agencies' records
27 Substitution of section 31
31 Applications for amendment of agencies' records
28 Amendment of section 32—Dealing with applications
29 Amendment of section 34—Determination of applications
30 Amendment of section 35—Refusal to amend records

Released by AGD under the FOI Act 1991 (SA).

31 Amendment of section 36—Notices of determination
32 Amendment of section 37—Notations to be added to records
33 Amendment of section 38—Internal review
34 Amendment of section 39—External review by Ombudsman
35 Amendment of section 40—Reviews by SACAT
36 Substitution of section 47
47 Service
37 Insertion of section 49A
49A Improper direction or influence
38 Substitution of sections 50 and 51
50 Protection in respect of liability
39 Amendment of section 53—Fees and charges
40 Amendment of section 55—Regulations
41 Amendment of Schedule 1—Exempt documents
42 Amendment of Schedule 2—Exempt agencies

Schedule 1—Transitional provisions

1 Application of amendments

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Freedom of Information (Miscellaneous) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Substitution of sections 3 and 3A

Sections 3 and 3A—delete the sections and substitute:

3—Principles and objects of Act

(1) This Act is based on the following principles:

(a) that representative democratic government is supported and enhanced by ensuring that proper public scrutiny of government activities occurs;

(b) that documents and information held by government agencies are a public resource;

(c) that, consistently with the above principles, members of the public should have an enforceable, presumptive right to access such documents and information, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy.

(2) The objects of this Act are—

(a) to authorise and encourage the proactive public release of government information by agencies; and

(b) to enable community scrutiny and review of government activities and otherwise promote openness in government; and

(c) to promote and enhance the accountability of government agencies; and

(d) to further the good government of the State.

(3) It is the intention of Parliament—

(a) that this Act be interpreted and applied so as to further the principles and objects of this Act; and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government documents and information.

5—Amendment of section 4—Interpretation

(1) Section 4(1), definition of ***accredited FOI officer***—delete the definition and substitute:

accredited FOI officer—see section 4B;

(2) Section 4(1), definition of ***agency***—delete "but does not include an exempt agency"

(3) Section 4(1)—after the definition of ***court*** insert:

disclosure log—see section 28A;

disclosure log policy means any directions issued by the Premier as a disclosure log policy in accordance with section 28A;

(4) Section 4(1), definition of ***document***—delete the definition and substitute:

document includes—

(a) anything in which information is stored or from which information may be reproduced; and

(b) information stored in an electronic form by means of a digital data storage device;

electronic backup system includes any electronic system that copies and archives data as a form of secondary storage of the data;

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(5) Section 4(1), definition of ***exempt agency***—delete the definition and substitute:

exempt agency—see section 4A;

(6) Section 4(1), definition of ***personal affairs***—delete the definition and substitute:

personal information, of a person, means information or an opinion about the person, where the person is reasonably identifiable (whether or not the information or opinion is true);

(7) Section 4(1), definition of ***principal officer***, (b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) in any other case—a person who is designated by regulation as principal officer of the agency or (if there is no such regulation relating to the agency) the head or chief executive officer (however designated) of the agency or the person of greatest seniority in the agency;

(8) Section 4(3) to (6)—delete subsections (3) to (6) (inclusive).

6—Insertion of sections 4A, 4B and 4C

After section 4 insert:

4A—Exempt agencies

(1) The agencies listed in Schedule 2 are exempt agencies to the extent described in that Schedule.

(2) The regulations may declare that an agency is an exempt agency, or is an exempt agency in respect of functions or classes of information specified in the regulation.

(3) If an agency takes over functions of, or receives information of, another agency that has ceased to exist but that was an exempt agency in respect of those functions or that class of information, the agency that takes over those functions or that receives that information will be taken to be an exempt agency in respect of those functions or classes of information.

(4) Subject to subsection (5), if an agency—

(a) is an exempt agency, this Act does not apply to the agency; or

(b) is an exempt agency in respect of particular functions or classes of information, this Act does not apply to the agency with respect to those functions or classes of information.

(5) A reference in Schedule 1 to an agency includes an exempt agency or an exempt agency in respect of particular functions or classes of information.

4B—Accredited FOI officers

(1) A person is an accredited FOI officer of an agency for the purposes of an application under this Act if the person—

(a) is the principal officer of the agency; or

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(b) subject to subsection (2), is an officer of the agency who has been designated as an accredited FOI officer of the agency by the principal officer of the agency for the purposes of such applications in accordance with this section.

(2) If the principal officer of an agency (***agency 1***) is satisfied that, due to the small size of the agency, it is not practicable for any officer of the agency to be the accredited FOI officer, the principal officer of agency 1 may enter into an agreement or arrangement with another agency (***agency 2***) whereby the principal officer of agency 2 would designate an officer of agency 2 as the accredited FOI officer of agency 1.

(3) The principal officer of an agency may only designate a person as an accredited FOI officer if—

(a) the person has completed training of a type approved by the Minister for an accredited FOI officer; and

(b) subject to subsection (4), the person—

(i) in the case of an agency that is an administrative unit of the Public Service—is an executive employee or an employee who usually reports to an executive employee; or

(ii) in the case of South Australia Police—

(A) is an officer in South Australia Police or is an employee who usually reports to an officer in South Australia Police; or

(B) is an executive employee or an employee who usually reports to an executive employee; or

(iii) in the case of any other agency—is employed in a position that usually reports to the principal officer of the agency or to the deputy or immediate delegate of the principal officer.

(4) The principal officer of an agency may designate a person as an accredited FOI officer for the purposes of applications under Part 4 despite the fact that the person is not a person described in subsection (3)(b).

4C—When document is held by an agency

(1) A reference in this Act to documents held by or in the possession of an agency is, where the agency is a Minister, a reference only to such of those documents as relate to agencies for which the Minister is responsible.

(2) An agency is to be taken to hold a document at a particular time if the agency has a right of access to the document at that time.

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(3) An agency is not to be taken to hold a document while the document is held by or in the possession of an exempt agency for which the agency is responsible.

(4) An agency will only be taken to hold a document stored in an electronic backup system if the document has otherwise been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the *State Records Act 1997* or contrary to the agency's established record management procedures.

(5) An agency that maintains an electronic backup system on behalf of other agencies is taken not to hold documents stored in the electronic backup system on behalf of those other agencies.

7—Amendment of section 8—Defunct and restructured agencies

Section 8—before subsection (1) insert:

(a1) Where an agency takes over some, but not all, of the functions of another agency, the responsibilities under this Act in respect of documents at any given time will lie with the agency that holds the documents at that time.

8—Insertion of Part 1A

After Part 1 insert:

Part 1A—Proactive disclosure

8A—Proactive disclosure principles

For the purposes of this Part, the ***proactive disclosure principles*** are as follows:

(a) documents and information held by government agencies are a public resource;

(b) government agencies are committed to being open and accountable, engaging with the community and encouraging public participation in the making of decisions, policies and laws;

(c) government agencies are committed to enhancing the flow of information from government agencies by releasing information, unless there is good reason not to, without the need for an access application under this Act;

(d) proactive publication of documents and information held by government agencies—

(i) puts information into the community faster and at lower cost; and

(ii) reduces agency time and resources spent processing individual access applications; and

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(iii) demonstrates a commitment to openness, accountability and transparency, which in turn may increase confidence in government.

8B—Proactive disclosure policy

(1) The Premier must, consistently with the proactive disclosure principles, issue a ***proactive disclosure policy*** directing agencies specified in the policy to publish information relating to the agency or held by the agency (other than personal information of a person).

(2) The proactive disclosure policy must be published in the Gazette and on a website.

(3) An agency to which the proactive disclosure policy applies must ensure that information is published in compliance with that policy.

9—Amendment of section 9—Publication of information concerning agencies

(1) Section 9(2)—delete "personal affairs" wherever occurring and substitute in each case:

personal information

(2) Section 9(2)(f)(i)—delete "designation of the officer or officers to whom" and substitute:

manner in which

(3) Section 9(2)(f)(ii)—delete "address or addresses at" and substitute:

manner in

(4) Section 9(3)(c)—delete "designation of the officer or officers to whom" and substitute:

manner in which

(5) Section 9(3)(d)—delete "address or addresses at which, and the times during which," and substitute:

manner in which

10—Substitution of section 13

Section 13—delete the section and substitute:

13—Applications for access to agencies' documents

(1) An application for access to an agency's document under this Act—

(a) must be in writing and contain such information as is reasonably necessary to enable the document to be identified; and

(b) must specify—

(i) a postal address in Australia; and

(ii) if the applicant is able to provide an email address for the purposes of section 47—that email address; and

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(c) must be accompanied by such application fee as may be prescribed; and

(d) may request that access to the document be given in a particular way; and

(e) must be lodged in a manner determined by the agency.

(2) If an application—

(a) is for access to documents received or produced by an agency, or part of an agency, during a specified period of time; and

(b) does not provide further identifying information about the documents,

the application will not be taken to contain sufficient information for the purposes of subsection (1)(a).

(3) If the application is for access to a document that contains personal information of the applicant, the application must indicate that fact and the applicant must provide with the application, or within 14 days after receipt of the application by the agency—

(a) evidence of identity for the applicant; and

(b) if an agent is acting for the applicant—evidence of the agent's authorisation to so act and evidence of identity for the agent.

11—Amendment of section 14—Dealing with applications

(1) Section 14(1)—after "the agency" insert:

and all determinations required to be made by the agency under this Act in relation to the application must be made by an accredited FOI officer of the agency

(2) Section 14(2)—delete "30 days" and substitute:

45 days

(3) Section 14—after subsection (2) insert:

(3) An application is not taken to be received by an agency for the purposes of subsection (2) unless it complies with the requirements of section 13(1) and, if applicable, section 13(3).

(4) An accredited FOI officer dealing with an application made after the commencement of this subsection must ensure that the applicant is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the time within which the application is required to be dealt with under this Act, the applicant's rights of review under this Act and the information required under section 28B.

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12—Amendment of section 14A—Extension of time limit

(1) Section 14A(1)—after "section 14 if" insert:

the applicant consents to an extension or if

(2) Section 14A(1)—after paragraph (b) insert:

or

(c) the agency is dealing with an unusually high number of applications under this Act and does not have sufficient resources to deal with the application within that period; or

(d) the agency is dealing with a number of related applications under this Act (whether involving the same applicant or applicants who are acting in concert in connection with those applications) and dealing with all of the related applications within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

13—Insertion of section 14B

After section 14A insert:

14B—Searches for documents held by agency

(1) The obligation of an agency to provide access to documents in response to an application is limited to documents held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the documents applied for that were held by the agency when the application was received.

(3) The agency's searches must be conducted using the most efficient means reasonably available to the agency.

(4) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of documents and information stored electronically.

(5) An agency is not required to search for documents in an electronic backup system unless the agency is taken to hold the documents in that system by virtue of section 4C(4).

(6) An agency is not required to undertake any search for documents in the circumstances set out in section 18(1).

14—Amendment of section 17—Agencies may require advance deposits

(1) Section 17(4)—delete subsection (4) and substitute:

(4) A request for an advance deposit must be accompanied by a notice that specifies—

(a) the basis on which the amount of the deposit has been calculated; and

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(b) the day on which the determination to request the advance deposit was made; and

(c) the designation of the officer by whom the determination was made; and

(d) contact details for the agency; and

(e) the rights of review conferred by this Act; and

(f) the procedures to be followed for the purpose of exercising those rights.

(2) Section 17—after subsection (6) insert:

(7) A request for an advance deposit (or for a further advance deposit) under this section is a determination for the purposes of this Act.

15—Amendment of section 18—Agencies may refuse to deal with certain applications

(1) Section 18(2)—after "its functions" insert:

(and the period during which the applicant is given an opportunity to amend the application is not to be taken into account in calculating the period within which the relevant application is to be dealt with).

(2) Section 18—after subsection (2) insert:

(2aa) For the avoidance of doubt, an agency will be taken to have endeavoured to assist an applicant in compliance with subsection (2) if the agency has contacted or attempted to contact the applicant for that purpose but the applicant has not responded or has not satisfactorily amended their application within 21 days or such longer period as the agency may allow in the circumstances.

(2ab) In deciding whether dealing with an application would substantially and unreasonably divert an agency's resources for the purposes of subsection (1), the agency is entitled to consider 2 or more applications (including any previous application) as the 1 application if the agency determines that the applications are related and are made by the same applicant or by applicants who are acting in concert in connection with those applications.

(2ac) If an agency determines that more than 40 hours of work is likely to be required in dealing with an application, it will be taken to be the case that the work involved in dealing with that application would substantially and unreasonably divert the agency's resources for the purposes of subsection (1).

(3) Section 18(2a)—after "the application is" insert:

frivolous or vexatious or is otherwise

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(4) Section 18—after subsection (2a) insert:

(2b) An agency may refuse to deal with, or to continue dealing with, with an application if the document to which the application relates is or has been the subject of a subpoena or other order of a court or tribunal for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order.

(2c) An agency may refuse to deal with, or to continue dealing with, an application if the applicant is prevented from making the application by a declaration of the Ombudsman under section 18A.

(2d) An agency may refuse to deal with, or to continue dealing with, an application if the agency has already decided a previous application for the documents concerned (or for documents that contain substantially the same information) made by the same applicant or by other applicants who are acting in concert with the applicant and there are no reasonable grounds for believing that the agency would make a different decision on the application.

16—Insertion of section 18A

After section 18 insert:

18A—Vexatious applicants

(1) The Ombudsman may, on the Ombudsman's own initiative or on the application of 1 or more agencies, declare in writing that a person is a vexatious applicant.

(2) The Ombudsman may make the declaration in relation to a person only if the Ombudsman is satisfied that—

(a) the person has repeatedly made applications under this Part or Part 5 (or both); and

(b) the repeatedly made applications are an abuse of the right of access or made for a purpose other than to obtain access to information.

(3) An applicant may be found to have repeatedly made applications for the purposes of subsection (2) whether the applications were made to the same agency or to different agencies.

(4) The Ombudsman must not make the declaration in relation to a person without giving the person an opportunity to make written or oral submissions.

(5) A copy of the declaration must be given to the person as soon as practicable.

(6) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.

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(7) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an application under this Part or Part 5 only with the written permission of the Ombudsman.

(8) The Ombudsman may publish—

(a) a declaration and the reasons for making the declaration; and

(b) a decision not to make a declaration and the reasons for the decision.

(9) The Ombudsman may publish the name of a person the subject of a declaration under this section when publishing the declaration and the reasons for making it.

17—Amendment of section 19—Determination of applications

Section 19(2)(b)—delete "30 days" and substitute:

45 days

18—Insertion of section 19A

After section 19 insert:

19A—Determining when disclosure is contrary to public interest

For the purposes of Schedule 1, disclosure of a document would, on balance, be contrary to the public interest if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

Note—

The following are some examples of public interest considerations in favour of disclosure:

(a) disclosure of the document could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance;

(b) disclosure of the document could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public;

(c) disclosure of the document could reasonably be expected to ensure effective oversight of the expenditure of public funds;

(d) the document is personal information of the person to whom it is to be disclosed;

(e) disclosure of the document could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency (or an officer of an agency).

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19—Amendment of section 20—Refusal of access

Section 20(1) and (2)—delete subsections (1) and (2) and substitute:

(1) An agency may refuse access to a document—

(a) if it is otherwise publicly available (whether or not availability of the document is by inspection only and whether or not availability is subject to a charge); or

(b) if access to the document has previously been given to the applicant; or

(c) if it is a document that—

(i) was not created or collated by the agency itself; and

(ii) genuinely forms part of library material held by the agency; or

(d) if, having taken all reasonable steps to find the document, the agency is satisfied that it is not possible to give access to the document because the document cannot be found or does not exist.

(2) An agency must refuse access to an exempt document referred to in Schedule 1 Part 1 and may refuse access to any other exempt document.

20—Amendment of section 22—Forms of access

Section 22—after subsection (3) insert:

(3a) If giving access to a document in accordance with an application will disclose to the applicant information that the agency reasonably considers is outside the scope of the application, the agency may delete the out of scope information from a copy of the document and give access to the document by giving access to a copy of the document with the out of scope information deleted.

21—Amendment of section 23—Notices of determination

(1) Section 23(1)—delete subsection (1) and substitute:

(1) An agency must notify an applicant in writing of its determination of the application.

(2) Section 23(2)(b)(i)—delete subparagraph (i) and substitute:

(i) the designation of the officer by whom the determination was made; and

(ia) contact details for the agency; and

(3) Section 23(2)—after paragraph (b) insert:

(ba) the documents (identified in accordance with any requirements prescribed by the regulations) to which the application relates that are held by the agency; and

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(4) Section 23—after subsection (2) insert:

(2a) If a determination is made by an officer at the direction of another officer, the notice must specify the designation of that other officer (ie the officer at whose direction the determination was made) for the purposes of subsection (2)(b)(i).

22—Amendment of section 25—Documents affecting inter-governmental or local governmental relations

(1) Section 25(1)—delete subsection (1) and substitute:

(1) This section applies to a document that contains matter concerning the affairs of a council (including a council constituted under a law of another State) or any government (whether of Australia or elsewhere).

(2) Section 25—delete "Government" wherever occurring and substitute in each case:

government

(3) Section 25(2a)—delete subsection (2a)

23—Amendment of section 26—Documents containing personal information

(1) Section 26(1)—delete subsection (1) and substitute:

(1) This section applies to a document if—

(a) it contains personal information of any person (whether living or dead); and

(b) the nature of the personal information is such that it might be an exempt document by virtue of Schedule 1 clause 6.

(2) Section 26—after subsection (3) insert:

(3a) The requirement to give notice and defer giving access to the document in accordance with subsection (3)(c) and (d) does not apply where the agency has taken reasonable steps to obtain the views of the person concerned but has been unable to locate the person.

(3) Section 26(4)(c)—delete "is of the opinion that disclosure of the information to the applicant may" and substitute:

has a reasonable expectation that disclosure of the information to the applicant will

(4) Section 26(4)—delete "it is sufficient compliance with this Act if access to the document is given to a registered medical practitioner nominated by the applicant" and substitute:

the agency may require that the applicant nominate a registered medical practitioner for the purposes of this section and it is sufficient compliance with this Act if access to the document is given to the registered medical practitioner so nominated

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(5) Section 26(5)—delete subsection (5) and substitute:

(5) If an applicant is required to nominate a registered medical practitioner for the purposes of subsection (4), the agency may defer providing access to the document until a registered medical practitioner is so nominated.

(6) A reference in this section to ***the person concerned*** is—

(a) in the case of a deceased person—a reference to the personal representative of that person or, if there is no personal representative, the closest relative of that person of or above the age of 18 years; or

(b) in the case of a child under the age of 16—a reference to a guardian of the child.

24—Insertion of Part 3 Division 2A

Part 3—after Division 2 insert:

Division 2A—Disclosure logs

28A—Requirement for disclosure log

(1) An agency to which a disclosure log policy applies must keep a record (a ***disclosure log***) of information about applications made to the agency under this Part that the agency determines by deciding to provide access (to some or all of the documents applied for), if the agency considers that such information may be of interest to other members of the public.

(2) A disclosure log must be kept and made available to the public in accordance with the relevant disclosure log policy.

(3) A disclosure log policy must be published in the Gazette and on a website.

(4) A disclosure log policy may deal with any matter relating to disclosure logs including, without limitation, record keeping requirements in relation to a disclosure log (and the making of decisions as to what information is to be included in a disclosure log), the period during which information is to be retained on a disclosure log, requirements as to the destruction of information and fees for access to a disclosure log in specified circumstances.

(5) A disclosure log policy may provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the principal officer of the agency or an accredited FOI officer.

28B—Required information about applications

(1) The information about an application that is required to be recorded in an agency's disclosure log is as follows:

(a) the date the application was decided;

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(b) a description of all documents to which access was provided in response to the application;

(c) a statement as to whether any of the documents are now available from the agency to other members of the public and (if so) how they can be accessed;

(d) any other information required to be kept in the disclosure log in accordance with the disclosure log policy.

(2) No details are required to be recorded in the agency's disclosure log—

(a) if no objection is made under section 28C to the inclusion of information in the log before the application for access to the documents is decided—until the application is decided; or

(b) if an objection is made under section 28C to the inclusion of information in the log before the application for access to the documents is decided—until the agency is entitled, under that section, to include the information in the log.

(3) An agency is not required to include in its disclosure log information about any application for a document—

(a) containing personal information about the applicant (the applicant being a natural person) or any other natural person; or

(b) in respect of which any factors particular to the applicant were otherwise a consideration in the agency's determination of the public interest in connection with the disclosure of the document to the applicant.

(4) An agency is not required to include in its disclosure log information about an application if the application has been determined to be exempt in accordance with any provisions in the disclosure log policy.

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28C—Objections

(1) Each of the following persons (an ***authorised objector***) can object to the inclusion in the agency's disclosure log of all or specified information concerning an application:

(a) the applicant;

(b) any other person with whom the agency has consulted (or is required to consult) under this Act before providing access to any document sought in the application.

(2) An objection can include reasons for the objection and, in the case of an objection by an applicant, can be made as part of the application or separately.

(3) The grounds on which an authorised objector is entitled to object to the inclusion of information in an agency's disclosure log are limited to any 1 or more of the following:

(a) the information includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative);

(b) the information concerns the authorised objector's business, commercial, professional or financial interests;

(c) the information concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector;

(d) the information concerns the affairs of a government or a council (and the authorised objector is that government or council).

(4) An agency's notice under section 14(4) (acknowledging receipt of an application) is to include the following statements about the inclusion of information in the agency's disclosure log (unless the agency considers it unlikely that information about the application will be included in the disclosure log):

(a) a statement that information concerning the application will be included in the agency's disclosure log and that the applicant can object to this;

(b) a statement about the rights of review under this Act of a determination by the agency to include information in its disclosure log despite the applicant's objection.

(5) If an applicant for access to a document has objected to the inclusion of information in the agency's disclosure log, the agency's notice of determination under section 23 must indicate—

(a) the agency's determination about whether the applicant was entitled to object; and

(b) if the agency has determined that the applicant was entitled to object—the agency's determination about whether to include the information in its disclosure log.

(6) If a person referred to in subsection (1)(b) has objected to the inclusion of information in the agency's disclosure log, the agency must, as soon as is reasonably practicable after the determination concerned is made (and, in any case, within 7 days after the determination is made), give the person a written notice that indicates—

(a) the agency's determination about whether the person was entitled to object; and

(b) if the agency has determined that the person was entitled to object—the agency's determination about whether to include the information in its disclosure log.

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(7) An agency that determines that an authorised objector was not entitled to object to the inclusion of information in the agency's disclosure log is entitled to immediately include the information in the disclosure log.

(8) An agency that determines that an authorised objector was entitled to object to the inclusion of information in the agency's disclosure log but determines to include the information despite the objection must not include the information while the objector is entitled to apply for a review of the agency's determination (ignoring any period that may be available by way of extension of time to apply for review), or while any review duly applied for is pending.

25—Amendment of section 29—Internal review

(1) Section 29(2)(e)—delete "at an office of" and substitute:

with

(2) Section 29—after subsection (2) insert:

(2a) For the avoidance of doubt, where the determination the subject of the review is a deemed determination under section 19(2), the application for review may be lodged at any time after the agency is to be taken to have determined the application in accordance with that provision (whether or not the applicant has been given notice of the deemed determination) and the time limitation specified in subsection (2)(e) only applies if the applicant is given notice of the deemed determination.

(2b) The principal officer of the agency must ensure that an applicant for review is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the operation of subsection (5) and the applicant's further rights of review under this Act.

(2c) An application for review under this section must not be determined by the same person who made the determination that is the subject of the review.

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(3) Section 29(5)—delete "14 days" and substitute:

20 days (or within any extension of that period granted under subsection (5b))

(4) Section 29—after subsection (5) insert:

(5a) However, nothing prevents an agency from making a determination to give access to a document the subject of an application for review under this section after the period within which it was required to deal with the application for review (and any such determination is to be taken to have been made under this Act).

(5b) The principal officer of an agency that is dealing with an application for review may extend the period within which the application would otherwise have to be dealt with under subsection (5) (the ***usual period***)—

(a) by a further period of up to 14 days if satisfied that—

(i) the application relates to a large number of documents or necessitates additional searches through a large quantity of information and dealing with the application for review within the usual period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or

(ii) the application relates to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within the usual period; or

(iii) the agency is dealing with an unusually high number of applications under this section and does not have sufficient resources to deal with the application within the usual period; or

(iv) the agency is dealing with a number of related applications under this section (involving the same applicant or applicants who are acting in concert in connection with those applications) and dealing with all of the related applications within the usual period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or

(b) by a further period agreed with the applicant.

26—Amendment of section 30—Right to apply for amendment of agencies' records

Section 30(a)—delete "information concerning the person's personal affairs" and substitute:

personal information of the person

27—Substitution of section 31

Section 31—delete the section and substitute:

31—Applications for amendment of agencies' records

(1) An application for the amendment of an agency's records under this Act—

(a) must be in writing and contain such information as is reasonably necessary to enable the agency's document to which the applicant has been given access to be identified; and

(b) must specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out-of-date or misleading; and

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(c) if the applicant claims that the information contained in the document is incomplete or out-of-date—must be accompanied by such information as is necessary to complete the agency's records or to bring them up-to-date; and

(d) must specify—

(i) a postal address in Australia; and

(ii) if the applicant is able to provide an email address for the purposes of section 47—that email address; and

(e) must be lodged in a manner determined by the agency.

(2) The applicant must also provide with the application, or within 14 days after receipt of the application by the agency—

(a) evidence of identity for the applicant; and

(b) if an agent is acting for the applicant—evidence of the agent's authorisation to so act and evidence of identity for the agent.

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28—Amendment of section 32—Dealing with applications

(1) Section 32(1)—after "the agency" insert:

and all determinations required to be made by the agency under this Act in relation to the application must be made by an accredited FOI officer of the agency

(2) Section 32(2)—delete "30 days" and substitute:

45 days

(3) Section 32—after subsection (2) insert:

(3) An accredited FOI officer dealing with an application must ensure that the applicant is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the time within which the application is required to be dealt with under this Act and the applicant's rights of review under this Act.

29—Amendment of section 34—Determination of applications

Section 34(2)—delete "30 days" and substitute:

45 days

30—Amendment of section 35—Refusal to amend records

(1) Section 35(a) and (b)—delete "it is satisfied that" wherever occurring

(2) Section 35—after paragraph (c) insert:

or

(d) if the application is frivolous or vexatious or is not made in good faith; or

(e) if the agency has already decided a previous application made by the applicant that was substantially the same.

31—Amendment of section 36—Notices of determination

(1) Section 36(2)—delete "must specify"

(2) Section 36(2)(a)—before "the day" insert:

must specify

(3) Section 36(2)—after paragraph (a) insert:

(ab) must include a list of all of the documents (identified in accordance with any requirements prescribed by the regulations) to which the application relates that are held by the agency; and

(4) Section 36(2)(b)—after "is refused" insert:

, must specify

(5) Section 36(2)(b)(i)—delete subparagraph (i) and substitute:

(i) the designation of the officer by whom the determination was made; and

(ia) contact details for the agency; and

(6) Section 36—after subsection (2) insert:

(2a) If a determination is made by an officer at the direction of another officer, the notice must specify the designation of that other officer (ie the officer at whose direction the determination was made) for the purposes of subsection (2)(b)(i).

32—Amendment of section 37—Notations to be added to records

Section 37(1)—delete "at an office of" and substitute:

with

33—Amendment of section 38—Internal review

(1) Section 38(2)(d)—delete "at an office of" and substitute:

with

(2) Section 38—after subsection (2) insert:

(2a) For the avoidance of doubt, where the determination the subject of the review is a deemed determination under section 34(2), the application for review may be lodged at any time after the agency is to be taken to have determined the application in accordance with that provision (whether or not the applicant has been given notice of the deemed determination) and the time limitation specified in subsection (2)(d) only applies if the applicant is given notice of the deemed determination.

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(2b) The principal officer of the agency must ensure that an applicant for review is given a written notice specifying the date on which the application was received by the agency and providing the applicant with information about the operation of subsection (4) and the applicant's further rights of review under this Act.

(2c) An application for review under this section must not be determined by the same person who made the determination that is the subject of the review.

(3) Section 38(4)—delete "14 days" and substitute:

20 days

34—Amendment of section 39—External review by Ombudsman

(1) Section 39(1), definition of ***relevant review authority***—delete the definition

(2) Section 39—delete "the relevant review authority" wherever occurring and substitute in each case:

the Ombudsman

(3) Section 39(4)—delete "The relevant review authority may, in its" and substitute:

The Ombudsman may, in the Ombudsman's

(4) Section 39(5)(b)—delete paragraph (b) and substitute:

(b) may, if it appears to the Ombudsman that the agency has failed to properly search for, sort or compile documents relevant to the review or to undertake consultations relevant to the review that should have been undertaken by the agency—

(i) require the agency to provide information relating to the manner in which it searched for, sorted or compiled the documents or undertook the consultations; or

(ii) require the agency to search for, sort or compile the documents or undertake the consultations; or

(ii) require officers of the agency to attend at a time and place specified by the Ombudsman for the purpose of sorting and compiling the documents or undertaking the consultations; and

(5) Section 39(8)—delete subsection (8) and substitute:

(8) If the Ombudsman has reason to believe that an agency or the applicant has a document relevant to the review, the Ombudsman may give to the agency or the applicant a written notice requiring them to produce the document to the Ombudsman in a manner specified in the notice and within a reasonable period specified in the notice.

(8a) No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of an investigation under this section, except an obligation or restriction designed to keep the identity of an informant secret.

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(6) Section 39(10) and (15)—delete "A relevant review authority" wherever occurring and substitute in each case:

The Ombudsman

(7) Section 39(11)—delete subsection (11) and substitute:

(11) On an application under this section, the Ombudsman may (based on the circumstances existing at the time of the review)—

(a) if the determination the subject of the review arose by operation of section 19(2) or 34(2) or the Ombudsman is satisfied that the determination was not properly made—refer the matter back to the agency for the making of a new determination (and any resulting new determination is to be taken to have been made under this Act); or

(b) in any case—confirm, vary or reverse the determination the subject of the review.

(8) Section 39(12)—delete "it thinks fit, offer, together with its reasons for its" and substitute:

the Ombudsman thinks fit, offer, together with the reasons for the

(9) Section 39(15)—delete "its reasons" and substitute:

the reasons

(10) Section 39(16) and (17)—delete "a relevant review authority" wherever occurring and substitute in each case:

the Ombudsman

(11) Section 39—after subsection (16) insert:

(16a) The Ombudsman may dismiss an application if the Ombudsman considers that the applicant has failed to comply with subsection (7) or with a notice under subsection (8).

(12) Section 39—after subsection (17) insert:

(18) Nothing prevents an agency from making a determination to give access to a document the subject of a review under this section (and any such determination is to be taken to have been made under this Act).

35—Amendment of section 40—Reviews by SACAT

(1) Section 40(1a) and (2)—delete subsections (1a) and (2) and substitute:

(1a) However, a review by SACAT under subsection (1) may only relate to—

(a) a determination that a document was not an exempt document; or

(b) a question of law (in which case the application for review must be referred to a Presidential member of the Tribunal under section 26 of the *South Australian Civil and Administrative Tribunal Act 2013*).

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(2) A person (other than an agency) who is aggrieved by a determination—

(a) made on a review under Division 1 (other than a determination relating to the sufficiency of the agency's searches for documents); or

(b) made by the Ombudsman under section 18A,

may apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by SACAT.

(2) Section 40(4) to (6)—delete subsections (4) to (6) (inclusive) and substitute:

(4) In proceedings under subsection (1) or (2)(a)—

(a) the agency will be a party to the proceedings; and

(b) the Ombudsman will not be a party to the proceedings but is entitled to be notified of the proceedings; and

(c) SACAT may, of its own motion or on application by the Ombudsman, require the Ombudsman to make written submissions to SACAT in relation to the proceedings.

(3) Section 40(7)—delete "this section" and substitute:

subsection (1) or (2)(a)

(4) Section 40—after subsection (7) insert:

(7a) Nothing prevents an agency from making a determination to give access to a document the subject of proceedings under subsection (1) or (2)(a) (and any such determination is to be taken to have been made under this Act).

36—Substitution of section 47

Section 47—delete the section and substitute:

47—Service

A notice, determination or other document required or authorised to be given or served under this Act may be given or served personally, by post or by transmitting it by email to an email address provided by the intended recipient for the purposes of this section (in which case the notice, determination or document will be taken to have been given or served at the time of transmission).

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37—Insertion of section 49A

After section 49 insert:

49A—Improper direction or influence

A person must not—

(a) direct an accredited FOI officer to make a decision or determination for the purposes of this Act that the person knows, or ought reasonably to know, is not a decision or determination that the officer should, in the circumstances, make; or

(b) improperly influence (whether directly or indirectly) the making of a decision or determination for the purposes of this Act by an accredited FOI officer.

Maximum penalty: $5 000.

38—Substitution of sections 50 and 51

Sections 50 and 51—delete the sections and substitute:

50—Protection in respect of liability

(1) This section applies to the following acts:

(a) the publishing of information relating to an agency or held by an agency (other than personal information of a person) if the person publishing the information honestly believes that a proactive disclosure policy under Part 1A permits or requires the information to be published;

(b) the making of a determination if the person making the determination honestly believes that this Act permits or requires the determination to be made;

(c) the giving of access to a document pursuant to a determination referred to in paragraph (b);

(d) the publishing of any information in accordance with section 18A;

(e) the disclosure of information in a disclosure log if the person disclosing the information honestly believes that this Act permits or requires the disclosure to be made.

(2) If this section applies to an act—

(a) no action for defamation or breach of confidence lies against the Crown, an agency or an officer of an agency, by reason of the act; and

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(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the act lies against the author of the information or document or any other person by reason of the author or other person having supplied the information or document to an agency or Minister; and

(c) the act does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information or document by another person; and

(d) no offence is committed by an agency or an officer of an agency merely by reason of the act.

39—Amendment of section 53—Fees and charges

(1) Section 53(2aa)—delete subsection (2aa) and substitute:

(2aa) A fee or charge (other than an application fee prescribed under section 13(1)(c)) can only be required by an agency under this Act in respect of the costs to the agency of finding, retrieving, viewing, sorting, compiling and copying documents, and removing exempt matter from documents, as may be necessary for the proper exercise of a function under this Act and undertaking any consultations required by this Act in relation to the exercise of that function.

(2) Section 53—after subsection (4) insert:

(4a) If section 19(2) applies in relation to an application, the agency is, in respect of the application, entitled to any application fee prescribed under section 13(1)(c) but may not require the payment of any other fee or charge for dealing with the application.

40—Amendment of section 55—Regulations

Section 55—after its present contents (now to be designated as subsection (1)) insert:

(2) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another person.

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41—Amendment of Schedule 1—Exempt documents

(1) Schedule 1, clauses 1 and 2—delete clauses 1 and 2 and substitute:

1—Cabinet and Executive Council documents

(1) A document is an exempt document—

(a) if it is a document that has been specifically prepared for submission to Cabinet or Executive Council (whether or not it has been so submitted); or

(b) if it is a preliminary draft of a document referred to in paragraph (a); or

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

(d) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet or Executive Council; or

(e) if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted, to Cabinet or Executive Council.

(2) The following are not exempt documents by virtue of this clause:

(a) a document that merely consists of—

(i) matter that appears in an instrument that has been made or approved by the Governor and that has been officially published (either in the Gazette or elsewhere); or

(ii) factual or statistical material (including public opinion polling) that does not disclose information concerning any deliberation or advice of Cabinet or Executive Council or relate directly to a contract or other commercial transaction that is still being negotiated;

(b) a document that is attached to a document described in a paragraph of subclause (1) but that does not, itself, fall within any of the paragraphs in subclause (1);

(c) a document that has been submitted to Cabinet by a Minister if—

(i) a Minister has certified that Cabinet have approved the document as a document to which access may be given under this Act; or

(ii) 10 years have passed since the end of the calendar year in which the document was submitted to Cabinet and the document is not a prescribed document.

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(3) In this clause—

(a) a reference to ***Cabinet*** includes a reference to a committee of Cabinet and to a subcommittee of a committee of Cabinet; and

(b) a ***prescribed document*** (in subclause (2)(c)(ii)) means—

(i) a document that accompanies a document that has been specifically prepared for submission to Cabinet (a ***submission document***) and that consists of comments on the submission document by an agency other than the Minister who submitted the submission document to Cabinet; or

(ii) a document that is submitted only for the purpose of supporting strategic discussion and that does not contain any recommendations for Cabinet.

(2) Schedule 1, clause 4(2)(a)—after subparagraph (vi) insert:

(vii) to put at risk—

(a) any endangered, vulnerable or rare species (within the meaning of the *National Parks and Wildlife Act 1972*) or any threatened species or threatened ecological community (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth); or

(b) rare items of cultural or scientific importance; and

(3) Schedule 1, clause 4(3)—delete "has been created or is held by the State Intelligence Section of South Australia Police" and substitute:

the former State Intelligence Section of South Australia Police or has been created or is held by the State Intelligence Branch of South Australia Police

(4) Schedule 1, clause 6, heading—delete "affecting personal affairs" and substitute:

containing personal information

(5) Schedule 1, clause 6(1)—delete "information concerning the personal affairs" and substitute:

personal information

(6) Schedule 1, clause 6(2)—delete subclause (2)

(7) Schedule 1, clause 6(3)—delete "or (2)"

(8) Schedule 1, clause 13(6)—delete ", as soon as practicable, notify the Minister administering this Act, in writing, of that fact" and substitute:

notify the Minister administering this Act, in writing, of that fact within the period determined by that Minister

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(9) Schedule 1, clause 16—after subclause (1) insert:

(1a) A document is an exempt document if it was prepared for the purposes of an audit, examination or other statutory function required to be undertaken by the Auditor-General.

(1b) A document is not an exempt document by virtue of subclause (1a) if—

(a) the document is identified by the Auditor-General as a Management letter or an agency's response to a Management letter; and

(b) the Auditor-General has reported to the Parliament in respect of the period to which the Management letter or response relates.

(10) Schedule 1, clause 16(2)—delete subclause (2)

42—Amendment of Schedule 2—Exempt agencies

(1) Schedule 2—after paragraph (k) insert:

(kaa) the Office of Parliamentary Counsel in relation to information that would be privileged from production in legal proceedings on the ground of legal professional privilege;

(2) Schedule 2, paragraph (n)—delete "South Australian Superannuation Fund Investment Trust" and substitute:

Superannuation Funds Management Corporation of South Australia

(3) Schedule 2, paragraph (p)(iii)—delete subparagraph (iii) and substitute:

(iii) the former Operations Intelligence Section; or

(iiia) the State Protective Security Branch (or a body substituted for the State Protective Security Branch); or

Schedule 1—Transitional provisions

1—Application of amendments

(1) Subject to this clause, an amendment to the *Freedom of Information Act 1991* (the ***principal Act***) effected by a provision of this Act applies in relation to an application under the principal Act, or review proceedings relating to an application under the principal Act, if the application or proceedings are determined after the commencement of that provision (whether the application was lodged before or after that commencement).

(2) Part 3 Division 2A of the principal Act (as amended by this Act) only applies to an application made after the commencement of section 11(3) of this Act.

(3) The amendments to the principal Act effected by section 41(6) and (10) of this Act only apply to an application made after the commencement of those subsections.

Released by AGD under the FOI Act 1991 (SA).

2b

Freedom of Information (Miscellaneous) Amendment Bill 2020

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Substitution of sections 3 and 3A

This clause replaces the current provisions setting out objects and principles of administration with a new statement of principles and objects.

5—Amendment of section 4—Interpretation

This clause amends various definitions for the purposes of the measure.

6—Insertion of sections 4A, 4B and 4C

This clause inserts new provisions as follows:

4A—Exempt agencies

This section links to the definition of ***exempt agency*** in section 4.

4B—Accredited FOI officers

This section provides for accredited FOI officers and includes similar requirements to those currently specified in the definition of accredited FOI officer in section 4 of the Act but allows for small agencies to use the accredited FOI officer of another agency (where it is not practicable for the agency to have its own officer) and also allows a person to be designated as an accredited FOI officer for the purpose of dealing with applications for the amendment of records under Part 4 of the Act despite the fact that the person does not meet certain requirements relating to seniority.

4C—When document is held by an agency

This section sets out when an agency will be taken to hold a document for the purposes of the Act and in particular deals with documents contained in electronic backup systems.

Released by AGD under the FOI Act 1991 (SA).

7—Amendment of section 8—Defunct and restructured agencies

Section 8 is amended to provide that where an agency takes over some, but not all, of the functions of another agency, the responsibilities under the Act in respect of documents at any given time will lie with the agency that holds the documents at that time.

8—Insertion of Part 1A

This clause inserts a new Part setting out proactive disclosure principles and requiring the Premier to issue a ***proactive disclosure policy*** (consistently with the proactive disclosure principles) directing specified agencies to publish information relating to the agency or held by the agency (other than personal information of a person).

9—Amendment of section 9—Publication of information concerning agencies

This clause amends section 9 to reflect a change in terminology from records concerning "personal affairs" to records concerning "personal information" and to remove requirements to specify the "designation" of a person to whom inquiries should be made and to specify the "address" at which applications should be lodged and to replace those with more generic requirements to specify the "manner" in which inquiries should be made and the "manner" in which applications should be lodged.

10—Substitution of section 13

This clause substitutes a new section as follows:

13—Applications for access to agencies' documents

This section updates the provision on applications to allow for electronic forms of communication and also—

- makes it clear that applications that only identify the documents sought by date range will be taken to provide insufficient identifying information;
- sets out special identification requirements for applications for access to documents concerning personal information of the applicant.

Released by AGD, under the FOI Act 1991 (SA)

11—Amendment of section 14—Dealing with applications

Section 14 is amended to ensure that all determinations made in relation to an application are made by the accredited FOI officer, to clarify that an application is not taken to be received by an agency unless it complies with the requirements of section 13(1), to require certain information be given to applicants and to extend the time within which an application must be dealt with from the current 30 days to 45 days.

12—Amendment of section 14A—Extension of time limit

Section 14A is amended to allow (in addition to the existing grounds for an extension of time) an extension of time to be granted if the applicant consents to it or where the agency is dealing with an unusually high number of applications or where the agency is dealing with a number of related applications.

13—Insertion of section 14B

This clause inserts a new section dealing with an agency's obligation to undertake reasonable searches for documents that are the subject of an application.

14—Amendment of section 17—Agencies may require advance deposits

This clause requires additional information to be provided in a notice accompanying a request for an advance deposit and specifies that a request for an advance deposit is a determination for the purposes of the Act.

15—Amendment of section 18—Agencies may refuse to deal with certain applications

This clause provides a number of amendments aimed at clarifying the provision allowing an agency to refuse to deal with an application.

16—Insertion of section 18A

This clause inserts a new section empowering the Ombudsman, on the Ombudsman's own initiative or on the application of 1 or more agencies, to declare that a person is a vexatious applicant where—

- the person has repeatedly made applications for access or external review (or both); and
- the repeatedly made applications are an abuse of the right of access or made for a purpose other than to obtain access to information.

A determination under the provision will be reviewable by SACAT.

17—Amendment of section 19—Determination of applications

This amendment is consequential to the amendment to section 14 extending the time within which an application must be dealt with from the current 30 days to 45 days.

18—Insertion of section 19A

Various provisions of Schedule 1 provide that a document is exempt from disclosure if certain preconditions are satisfied and disclosure of the document would, on balance, be contrary to the public interest. Proposed new section 19A provides that for the purposes of that Schedule, disclosure of a document would, on balance, be contrary to the public interest if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

19—Amendment of section 20—Refusal of access

This clause amends the grounds for refusing access to a document to clarify that access may be refused if access to the document has previously been given to the applicant or if the document cannot be found or does not exist and to remove the current reference to documents created before 1 January 1987. In addition, proposed subsection (2) provides that an agency must refuse access to an exempt document referred to in Schedule 1 Part 1 (the restricted documents) and may refuse access to any other exempt document.

Released by AGD,under the FOI Act 1991 (SA).

20—Amendment of section 22—Forms of access

Section 22 is amended to allow an agency delete out of scope information from a copy of a document provided to an applicant.

21—Amendment of section 23—Notices of determination

This clause makes minor changes to the information to be provided in a notice of determination. The name of the officer that made the determination will not have to be provided but the notice will have to state a designation for the officer who made (or directed) the determination and provide contact details for the agency. Also the notice must specify (in accordance with the regulations) the documents to which the application relates that are held by the agency.

22—Amendment of section 25—Documents affecting inter-governmental or local governmental relations

This clause applies section 25 to a document that contains matter concerning the affairs of any council (including one constituted under a law of another State) or any government (whether of Australia or elsewhere).

23—Amendment of section 26—Documents containing personal information

This clause amends section 26 to:

- change references to information concerning the "personal affairs" of a person to references to "personal information" of a person;
- only require consultation with the person where the nature of the personal information is such that it might be an exempt document by virtue of Schedule 1 clause 6;
- disapply the notice requirement where you are unable to locate the person;
- allow an agency to require that the applicant nominate a medical practitioner who will be given access to the information where the agency has a reasonable expectation that disclosure of the information to the applicant would have an adverse effect on the physical or mental health, or the emotional state, of the applicant;
- provide for the situation where the personal information relates to a child.

24—Insertion of Part 3 Division 2A

This clause inserts a new Division on disclosure logs as follows:

Division 2A—Disclosure logs

28A—Requirement for disclosure log

Agencies will be required to keep a disclosure log (in accordance with requirements specified in the section) of information about applications made to the agency where access to documents is provided if the agency considers that such information may be of interest to other members of the public.

Released by AGD, under the FOI Act 1991 (SA).

28B—Required information about applications

This section sets out information that is to be recorded in a disclosure log.

28C—Objections

This section provides for the making of objections to the inclusion of information concerning an application in an agency's disclosure log.

25—Amendment of section 29—Internal review

This clause:

- clarifies when an application for review of a deemed determination can be lodged;
- requires written confirmation of the receipt of an application for review;
- specifies that a review cannot be conducted by the person who made the determination that is the subject of the review;
- changes the period for a deemed confirmation on review from 14 days to 20 days, with the possibility of an extension of that period in specified circumstances;
- makes it clear that nothing prevents the agency making a determination to give access to a document the subject of an application for a review after the period within which the agency was required to deal with the application for review (and any such determination is to be taken to have been made under the Act).

26—Amendment of section 30—Right to apply for amendment of agencies' records

This clause amends section 30 to reflect the change in terminology from information concerning "personal affairs" to "personal information".

27—Substitution of section 31

This clause substitutes section 31 as follows:

31—Applications for amendment of agencies' records

This section updates the provision on applications to allow for electronic forms of communication and also sets out identification requirements.

28—Amendment of section 32—Dealing with applications

Section 32 is amended to ensure that all determinations made in relation to an application are made by the accredited FOI officer, to require certain information be given to applicants and to extend the time within which an application must be dealt with from the current 30 days to 45 days.

29—Amendment of section 34—Determination of applications

This amendment is consequential to the amendment to section 32 extending the time within which an application must be dealt with from the current 30 days to 45 days.

Released by AGD under the FOI Act 1991 (SA).

30—Amendment of section 35—Refusal to amend records

This clause amends section 35 to make the existing grounds for refusing a request to amend records more objective, to add as grounds for refusal, that the application is frivolous or vexatious or is not made in good faith or that the agency has already decided a previous application made by the applicant that was substantially the same.

31—Amendment of section 36—Notices of determination

This clause makes minor changes to the information to be provided in a notice of determination. The name of the officer that made the determination will not have to be provided but the notice will have to state a designation for the officer who made (or directed) the determination and provide contact details for the agency. Also the notice must specify (in accordance with the regulations) the documents to which the application relates that are held by the agency.

32—Amendment of section 37—Notations to be added to records

A minor amendment is made to section 37 to allow for electronic lodgement of a notice.

33—Amendment of section 38—Internal review

This clause:

- allows for electronic lodgement of an application for internal review;
- clarifies when an application for review of a deemed determination can be lodged;
- requires written confirmation of the receipt of an application for review;
- specifies that a review cannot be conducted by the person who made the determination that is the subject of the review;
- changes the period for a deemed confirmation on review from 14 days to 20 days.

34—Amendment of section 39—External review by Ombudsman

This clause makes changes to reflect the fact that the Ombudsman is now the only applicable review authority under the provision and gives the Ombudsman an additional power to require an agency to provide information relating to the manner in which it searched for, sorted or compiled documents or undertook consultations.

35—Amendment of section 40—Reviews by SACAT

These amendments:

- allow an agency to seek a SACAT review of a determination by the Ombudsman that a document was not an exempt document (in addition to the existing right of review on a question of law);
- allow persons other than an agency to seek a SACAT review of a determination by the Ombudsman on a review or under new section 18A;
- require the Ombudsman to be notified of review proceedings (even though the Ombudsman is not a party to the proceedings) and to make written submissions to SACAT on application or at the request of SACAT;

Released by AGD under the FOI Act 1991 (SA).

- clarify that nothing prevents an agency from making a determination to give access to a document the subject of review proceedings.

36—Substitution of section 47

A new service provision allows for service of any notices and documents under the Act (eg a copy of a determination by the Ombudsman under proposed new section 18A) and allows for service by email if an email address for service is provided.

37—Insertion of section 49A

This clause creates a new offence of directing an accredited FOI officer to make a decision or determination that the person knows, or ought reasonably to know, is not one that the officer should make or improperly influencing the making of a decision or determination by an accredited FOI officer. The maximum fine is $5 000.

38—Substitution of sections 50 and 51

This clause substitutes a new provision granting protecting from liability in respect of various new functions to be carried out under the measure. The existing provisions of the Act are limited to granting access to documents but the new provision will extend to things such as publishing in accordance with new section 18A and disclosure of information in a disclosure log.

39—Amendment of section 53—Fees and charges

This clause makes some clarifications to the fees and charges provision.

40—Amendment of section 55—Regulations

This clause brings the general regulation making power into line with more recent drafting practice.

41—Amendment of Schedule 1—Exempt documents

This clause amends Schedule 1 (exempt documents) to:

- replace the existing exemptions relating to Cabinet and Executive Council documents;
- provide an exemption for documents that would put at risk any endangered, vulnerable or rare species or any threatened species or threatened ecological community or rare items of cultural or scientific importance;
- delete unnecessary exemptions;
- provide an exemption for documents prepared for the purposes of an audit, examination or other statutory function required to be undertaken by the Auditor-General;
- make other minor miscellaneous amendments.

42—Amendment of Schedule 2—Exempt agencies

Schedule 2 is sought to be amended:

- to make the Office of Parliamentary Counsel an exempt agency in relation to information that would be privileged from production in legal proceedings on the ground of legal professional privilege. Such information is exempt under

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Schedule 1 in any case but, if the information is only subject to a Schedule 1 exemption and a request for access is made, OPC is still required to undertake searches for the documents and compile the documents for the Departmental accredited FOI officer to enable them to determine the application. This arrangement is inappropriate where the documents include privileged documents of non-government members of Parliament;

- to update some references.

Schedule 1—Transitional provisions

1—Application of amendments

The Schedule sets out transitional provisions.

Released by AGD, under the FOI Act 1991 (SA).