

Freedom of Information Amendment Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

**Freedom of Information Amendment
Bill 2007**

A Bill for

An Act to amend the *Freedom of Information Act 1992*.

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Freedom of Information Amendment Act 2007*.

2. Commencement

(1) This Act comes into operation as follows:

- 5 (a) sections 1 and 2 — on the day on which this Act
 receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation
 (different days may be fixed for different provisions).

10 (2) If when the *Information Privacy Act 2007* section 142 comes
 into operation section 31 has not come into operation, section 31
 expires.

 (3) If when the *Information Privacy Act 2007* section 144 comes
 into operation section 33 has not come into operation, section 33
 expires.

15 **3. The Act amended**

The amendments in this Act are to the *Freedom of Information
Act 1992**.

[* *Reprint 4 as at 10 September 2004.*

20 *For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1 and Acts
Nos. 41 and 43 of 2006.]*

4. Section 6 amended

(1) Section 6 is amended by inserting before “Parts” the subsection
designation “(1)”.

25 (2) At the end of section 6 the following subsection is inserted —

“

- (2) Parts 2 and 4 do not apply to a person’s access to a
 document if the person is able to obtain access to the

document (whether for a fee or charge or not)
otherwise than under this Act.

”.

5. Section 12A inserted

5 After section 12 the following section is inserted in Part 2
Division 1 —

“

12A. Withdrawal of application

10 An access applicant may withdraw an access
application by giving a written notice to that effect to
the agency.

”.

6. Section 13A inserted

After section 13 the following section is inserted —

15

“

**13A. Agency may request consultation or further
information**

20 (1) In order to deal with the access application the agency
may in a written notice given to the applicant request
the applicant to consult with, or provide further
information to, the agency about the application.

(2) A notice under subsection (1) has to —
25 (a) give details of the access application; and
(b) state that the notice is given under this section;
and
(c) state the name and designation of the officer of
the agency who must be consulted or informed.

s. 7

- (3) The agency is not allowed under subsection (1) —
- (a) to request the applicant to provide information as to the applicant's reasons for wishing to obtain access to the requested documents; or
 - (b) to inquire as to those reasons in the course of consultation.

”.

7. Section 17 amended

- (1) Section 17(3) is amended by deleting “\$25, or such greater amount as is prescribed,” and inserting instead —

“ the prescribed amount ”.

- (2) After section 17(3) the following subsection is inserted —

“

- (4) Unless a greater amount is prescribed by regulation, \$60 is the “**prescribed amount**” for the purposes of subsection (3).

”.

8. Section 19 amended

Section 19(4) is repealed.

9. Section 20 amended

- (1) After section 20(2) the following subsection is inserted —

“

- (2a) An agency may refuse to deal with an access application if the application —

- (a) is substantially in the same terms as one already made by the applicant to the agency; or
- (b) is frivolous or trivial in nature; or
- (c) is made in order to harass the agency; or

- (d) amounts to an abuse of the right of access
created by this Act.

”.

- (2) Section 20(3) is amended by inserting after “subsection (2)” —
“ or (2a) ”.

10. Section 23 amended

Section 23(3) is repealed.

11. Section 24 replaced by sections 24 and 24A

Section 24 is repealed and the following sections are inserted
instead —

“

24. Deletion of exempt matter

If the access application requests access to a document
and —

- (a) the matter contained in the document includes
exempt matter; and
(b) it is practicable for the agency to edit a copy of
the document so as to delete the exempt matter;
and
(c) the agency considers (either from the terms of
the application or after consultation with the
applicant) that the applicant would wish to be
given access to an edited copy,

the agency has to make and give access to an edited
copy.

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24A. Deletion of matter outside the ambit of an access application

If the access application requests access to a document and —

- 5 (a) the matter contained in the document includes matter that may reasonably be regarded as being outside the ambit of the application (“**irrelevant matter**”); and
- 10 (b) it is practicable for the agency to edit a copy of the document so as to delete the irrelevant matter; and
- 15 (c) the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,

the agency may make and give access to an edited copy.

”.

12. Section 30 amended

20 Section 30 is amended as follows:

(a) after paragraph (c) by inserting —

“

25 (ca) if the decision is that access is to be given to an edited copy of a document under section 24A —

(i) the fact that access is to be given to an edited copy; and

(ii) the grounds on which matter has been deleted;

30 and

”;

(b) after paragraph (d) by inserting —

“

(da) if the decision is to give access to a document in a way other than the way requested by the applicant — the reasons for giving access that other way; and

”;

(c) after each of paragraphs (a), (b), (c), (d), (e) and (f) by inserting —

“ and ”.

13. Section 30A inserted

After section 30 the following section is inserted —

“

30A. Applications may be regarded as having been withdrawn in certain circumstances

(1) The agency may in a written notice given to an applicant (a “**compliance notice**”) advise the applicant that the applicant may be regarded by the agency as having withdrawn the access application if the applicant does not —

(a) comply with a request of the agency contained in a notice under section 13A(1) to consult with, or provide further information to, the agency about the application; or

(b) nominate a suitably qualified person under section 28; or

(c) obtain access to requested documents,

within the period of 30 days after the day on which the compliance notice was given to the applicant.

(2) Subsection (1)(c) applies if the applicant has been given notice under section 13(1)(b) of the agency’s decision to give access to requested documents.

s. 13

- (3) A compliance notice has to —
- (a) give details of the access application; and
 - (b) state that the notice is given under this section and that failure to comply with it may result in the applicant being regarded as having withdrawn the access application; and
 - (c) in the case of a notice under subsection (1)(a), give details of the notice under section 13A(1) that it refers to; and
 - (d) in the case of a notice under subsection (1)(b), state the name and designation of the officer of the agency to whom the nomination is to be given; and
 - (e) in the case of a notice under subsection (1)(c), state the name and designation of the officer of the agency from whom access to the document is to be obtained.
- (4) The agency may regard the applicant as having withdrawn the access application if, within the period of 30 days after the day on which the agency gave the applicant a compliance notice, the applicant does not —
- (a) in the case of a notice under subsection (1)(a), comply with the request referred to in the notice; or
 - (b) in the case of a notice under subsection (1)(b), nominate a suitably qualified person under section 28; or
 - (c) in the case of a notice under subsection (1)(c), obtain access to requested documents.
- (5) If the agency decides to regard the applicant as having withdrawn the access application, the agency is to give the applicant a written notice of that decision.

- (6) The notice under subsection (5) has to give details of —
- (a) the day on which the decision was made; and
 - (b) the name and designation of the officer who made the decision; and
 - (c) the reasons for deciding to regard the applicant as having withdrawn the access application; and
 - (d) the rights of review and appeal (if any) under this Act and the procedure to be followed to exercise those rights.
- ”.

14. Section 32 amended

Section 32(1) is amended by inserting after “personal information” —

“

(other than details prescribed for the purposes of Schedule 1 clause 3(3))

”.

15. Part 2 Division 4 repealed

Part 2 Division 4 is repealed.

16. Section 39 amended

Section 39(2) is amended as follows:

- (a) after paragraph (a)(iv) by inserting —
- “
- (iva) give access to a document in a way other than in the way requested by the applicant; or
- ”.

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(b) after paragraph (a)(v) by inserting —

“

(va) regard, under section 30A, an applicant
as having withdrawn an access
application; or

”;

(c) after each of paragraph (a)(i) to (iv) by inserting —

“ or ”.

17. Section 40 amended

Section 40(3) is amended by deleting “the principal officer of”.

18. Section 62A inserted

Before section 63 the following section is inserted in Part 4
Division 2 —

“

62A. How Commissioner is to deal with a complaint

- (1) The Commissioner is to “**deal with**” a complaint by
endeavouring to resolve the complaint by conciliation.
- (2) Despite subsection (1), if the Commissioner had started
to deal with a complaint before the commencement of
the *Freedom of Information Amendment Act 2007*
section 18, the provisions of this Part as in force before
that commencement continue to apply in relation to the
complaint as if they were still in force.

”.

19. Section 63 amended

- (1) Section 63(1) is amended by inserting before “deal” —
“ receive and, subject to this Act, ”.

(2) After section 63(1) the following subsection is inserted —

“

(1a) Proceedings conducted by the Commissioner to deal
with a complaint are called **“conciliation
proceedings”**.

”.

(3) Section 63(2) is amended by deleting the full stop after
paragraph (f) and inserting —

“

;

(g) reviewing an agency’s procedures —

(i) for giving members of the public access
to the documents of the agency under
Part 2; and

(ii) for amending personal information in
the documents of the agency under
Part 3.

”.

(4) Section 63(3) is amended as follows:

(a) in paragraph (a) by deleting “but is not a Minister” and
inserting instead —

“ for which a Minister is responsible ”;

(b) in paragraph (b) by inserting after “Minister” —

“

or the principal officer of an agency for which
no Minister is responsible

”.

s. 20

20. Sections 64A and 64B inserted

At the end of Part 4 Division 2 the following sections are inserted —

“

5 **64A. Powers relating to review**

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to a review under section 63(2)(g), the Commissioner may give to the person a written notice requiring the person —
- 10 (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the Commissioner.
- 15 (2) A notice given by the Commissioner under subsection (1) has to state —
- (a) the place at which the information or document is to be given or produced to the Commissioner; and
- 20 (b) the time at which, or the period within which, the information or document is to be given or produced.
- (3) If the Commissioner has reason to believe that a person has information relevant to a review under
- 25 section 63(2)(g), the Commissioner may give to the person a written notice requiring the person to appear before the Commissioner at a time and place specified in the notice to answer questions relevant to the review.
- (4) The Commissioner may administer an oath or
- 30 affirmation to a person required under subsection (3) to appear before the Commissioner and may examine such a person on oath or affirmation.

- (5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

5 **64B. Commissioner to report on review**

- (1) As soon as practicable after the completion of a review under section 63(2)(g) the Commissioner must —
- (a) prepare a report on the review; and
 - (b) give a copy of the report to the agency affected by the review.
- (2) The Commissioner may include in the report any recommendations that the Commissioner considers appropriate as a result of the review.
- (3) If a report includes recommendations that particular action be taken by the agency, the Commissioner may, by written notice, request the agency to inform the Commissioner of —
- (a) the steps it has taken, or proposes to take, to give effect to the recommendations; or
 - (b) its reasons for not taking, or proposing to take, such steps.

”.

21. **Section 65 amended**

- (1) Section 65(1) is amended as follows:
- (a) after paragraph (e) by inserting —
 - “
 - (ea) to give access to a document in a way other than in the way requested by the applicant; or
 - ”;

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(b) after paragraph (f) by inserting —

“

(fa) under section 30A to regard an applicant as
having withdrawn an access application; or

”;

(c) after each of paragraphs (a) to (e) by inserting —

“ or ”.

(2) After section 65(4) the following subsections are inserted —

“

(5) A complaint may be made about an alleged
contravention of a conciliation requirement.

(6) A complaint about an alleged contravention of a
conciliation requirement may be made by —

(a) the person who was the complainant in the
conciliation proceedings to which the relevant
conciliation proceedings record relates; or

(b) a person joined as a party to those proceedings
under section 69(2).

”.

22. Section 66 amended

(1) Section 66(1)(b) is amended by deleting “decision” and
inserting instead —

“

access or amendment decision, or alleged
contravention of a conciliation requirement,

”.

(2) Section 66(2) and (3) are amended by inserting after
“complaint” —

“ against an access or amendment decision ”.

(3) After section 66(3) the following subsection is inserted —

“

(3a) A complaint about an alleged contravention of a conciliation requirement may be lodged within the period of 6 months after the day on which the complainant first became aware of the alleged contravention.

”.

(4) Section 66(4) is amended by deleting “or (3)” and inserting instead —

“ , (3) or (3a) ”.

23. Section 67 amended

(1) Section 67(1) is amended after paragraph (b) by deleting the full stop and inserting —

“

; or

(c) the complainant has not complained to the agency about the access or amendment decision, or alleged contravention of a conciliation requirement, and the Commissioner considers that it would be appropriate for the agency to deal with the complaint; or

(d) the complainant has complained to the agency about the access or amendment decision, or alleged contravention of a conciliation requirement, and the Commissioner considers that the agency —

(i) has dealt adequately with the complaint; or

(ii) is dealing adequately with the complaint; or

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(iii) has not yet had an adequate opportunity to deal with the complaint;

or

(e) in the case of an alleged contravention of a conciliation requirement, the complainant has made a complaint about the alleged contravention to the Parliamentary Commissioner and that complaint is, or has been, the subject of an investigation under the *Parliamentary Commissioner Act 1971*.

”.

(2) Section 67(2) is amended by deleting “in writing, of the decision and the reasons for the decision.” and inserting instead —

“

by notice in writing, of —

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the rights, if any, of the complainant under section 67B.

”.

24. Sections 67A and 67B inserted

After section 67 the following sections are inserted —

“

67A. Referral of complaint to agency in certain circumstances

- (1) If —
 - (a) the Commissioner has given a complainant a notice under section 67(2); and

- (b) the reason for the Commissioner's decision is a reason referred to in section 67(1)(c) or (d)(ii) or (iii),

the Commissioner has to —

- 5 (c) refer the complaint to the agency and ask the agency to deal with, or continue to deal with, the complaint; and
- (d) notify the complainant in writing of the referral.

(2) If a complaint is referred under subsection (1) —

- 10 (a) the agency has to deal with, or continue to deal with, the complaint (the **“initial complaint”**); and
- (b) the complainant is not entitled to make another complaint to the Commissioner about the access or amendment decision or alleged contravention of a conciliation requirement that is the subject of the initial complaint unless —
- 15 (i) the agency has notified the complainant in writing that the agency has finished dealing with the initial complaint; or
- 20 (ii) a period of 3 months has elapsed since the referral of the initial complaint.

67B. Referral of complaint to State Administrative Tribunal if Commissioner decides not to deal with it

- 25 (1) If —
- (a) the Commissioner has given a complainant a notice under section 67(2); and
- (b) the reason for the Commissioner's decision is a reason referred to in section 67(1)(a), (b), (d)(i) or (e),
- 30

the complainant may require the Commissioner to refer the complaint to the Tribunal.

s. 25

(2) A requirement under subsection (1) is to be made by notice in writing served on the Commissioner within the period of 21 days after the complainant receives the notice under section 67(2).

5 (3) On receipt of a notice under subsection (2), the Commissioner has to refer the complaint to the Tribunal.

”.

25. Section 69 amended

10 (1) Section 69(1) is repealed and the following subsection is inserted instead —

“

(1) Each of the following is a party to conciliation proceedings —

- 15 (a) the complainant;
 (b) the agency;
 (c) a person joined as a party under subsection (2) or (3).

”.

20 (2) Section 69(4) is amended by deleting “a decision made on the complaint” and inserting instead —

“ the outcome of conciliation proceedings ”.

26. Section 70 amended

25 (1) Section 70(2) is amended by deleting “Proceedings” and inserting instead —

“ Conciliation proceedings ”.

(2) Section 70(3) is amended by deleting “a complaint” and inserting instead —

“ conciliation proceedings ”.

- (3) Section 70(4) and (5) are repealed and the following subsections are inserted instead —

“

- 5 (4) The Commissioner may determine the procedure for conciliation proceedings and may give such directions and do such other things as the Commissioner thinks fit in order to deal with the complaint.
- (5) Without limiting subsection (4), the Commissioner may —
- 10 (a) require the parties, or any of them, to appear before the Commissioner, either separately or together;
- (b) nominate a person (a “**conciliator**”) to deal with the complaint.
- 15 (5a) A conciliator —
- (a) may require the parties, or any of them, to appear before the conciliator, either separately or together; but
- (b) does not have power to require information or documents to be given or produced.
- 20

”.

- (4) Section 70(6) is repealed and the following subsections are inserted instead —

“

- 25 (6) If a party is required or permitted to appear in conciliation proceedings, the party —
- (a) is entitled to appear personally or by an agent other than a solicitor or counsel; or
- (b) may, by leave of the Commissioner, be
- 30 represented by a solicitor or counsel.

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- (7) No person other than a solicitor or counsel is entitled to demand or receive any fee or reward for representing a party in conciliation proceedings.
- 5 (8) If the complaint is referred to the Tribunal, evidence of anything said or done in conciliation proceedings is not admissible before the Tribunal.

”.

27. Section 71 replaced

10 Section 71 is repealed and the following section is inserted instead —

“

71. Conciliation proceedings record

- 15 (1) If a complaint is resolved by conciliation the Commissioner, in consultation with the parties to the conciliation proceedings, has to prepare a document that sets out —
- (a) the terms on which the complaint is resolved; and
- 20 (b) any requirement that is to be complied with by the agency (a “**conciliation requirement**”).
- (2) Without limiting subsection (1)(b) a conciliation requirement may consist of —
- (a) a requirement to do a particular thing within a particular period; or
- 25 (b) a requirement not to do a particular thing.
- (3) If the Commissioner is of the opinion that —
- (a) a complaint cannot be resolved by conciliation; or
- 30 (b) the Commissioner’s endeavours to resolve a complaint by conciliation have not been successful; or

- (c) the nature of a complaint is such that it should be referred to the Tribunal,
- the Commissioner has to prepare a document that includes a statement of the Commissioner's opinion under paragraph (a), (b) or (c).
- (4) The Commissioner has to give a copy of a document prepared under subsection (1) or (3) to each party to the conciliation proceedings.
- (5) If the Commissioner has given a complainant a copy of a document prepared under subsection (3), the Commissioner has to inform the complainant in writing of the complainant's rights under section 76.
- ”.

28. Section 74 amended

- Section 74(2) is amended by deleting “a decision on a complaint or in reasons given for the decision.” and inserting instead —
- “ the conciliation proceedings record. ”.

29. Section 75 amended

- (1) Section 75(1) is amended as follows:
- (a) by deleting “The” and inserting instead —
- “ In dealing with a complaint the ”;
- (b) by deleting “decide” and inserting instead —
- “ consider ”.
- (2) After section 75(2) the following subsection is inserted —
- “
- (3) If the complaint is referred to the Tribunal, subsection (2) has effect subject to section 77.
- ”.

s. 30

30. Sections 76, 77 and 78 replaced

Sections 76 to 78 are repealed and the following sections are inserted instead —

“

5

76. Referral of unresolved complaint to State Administrative Tribunal

10

(1) If the Commissioner has given a complainant a copy of a conciliation proceedings record prepared under section 71(3), the complainant may require the Commissioner to refer the complaint to the Tribunal.

15

(2) A requirement under subsection (1) is to be made by notice in writing served on the Commissioner within the period of 21 days after the complainant receives the copy of a conciliation proceedings record prepared under section 71(3).

(3) On receipt of a notice under subsection (2), the Commissioner has to refer the complaint to the Tribunal.

20

77. Provision of information to State Administrative Tribunal

25

(1) If a complaint is referred to the Tribunal under section 67B or 76, the Commissioner is to provide the following to the Tribunal —

(a) a statement of the reasons for referring the complaint to the Tribunal;

(b) other documents and other material in the Commissioner's possession or under the Commissioner's control and relevant to the Tribunal's consideration of the complaint.

30

(2) In the case of a referral under section 76, subsection (1)(b) extends to a copy of the conciliation proceedings record but does not extend to a document

that records anything said or done in the conciliation proceedings.

- (3) Subsection (1) does not affect the agency's obligation to provide a statement, documents and material to the Tribunal under the *State Administrative Tribunal Act 2004* section 24.

”.

31. Section 79 replaced

Section 79 is repealed and the following section is inserted instead —

“

79. Delegation

- (1) The Commissioner may delegate to a member of the staff of the Commissioner any power or duty of the Commissioner under another provision of this Act other than section 67(1), 67B(3), 75 or 76(3).
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

”.

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32. Section 81 amended

- (1) Section 81(1) and (2) are amended by inserting after
“Division” —
“ 2 or ”.
- 5 (2) Section 81(3) is amended by deleting “a complaint” and
inserting instead —
“ conciliation proceedings ”.

33. Section 82 amended

- (1) After section 82(1) the following subsections are inserted —
10 “
- (1a) Except as required for the purposes of proceedings
arising under or in relation to this Act, a person who is
or has been the Commissioner, the Acting
Commissioner or member of the staff of the
15 Commissioner cannot be required to disclose
confidential information in court or in any judicial
proceedings.
- (1b) The Commissioner, the Acting Deputy Commissioner
or a member of the staff of the Commissioner
20 authorised for the purposes of this subsection by the
Commissioner may disclose confidential information
to —
(a) the Parliamentary Commissioner; or
(b) the Deputy Parliamentary Commissioner; or
25 (c) a member of the Parliamentary Commissioner’s
staff authorised for the purposes of this
paragraph by the Parliamentary Commissioner,
if the information concerns a matter that is relevant to
the functions of the Parliamentary Commissioner.
- 30 (1c) Subsection (1b) does not authorise the disclosure of
exempt matter.
”.

- (2) Section 82(2)(a) is amended by deleting “or another written law” in both places where it occurs and, in the second place, inserting instead —

“ or as authorised by subsection (1b) ”.

5 **34. Section 83 amended**

Section 83 is amended as follows:

- (a) by inserting after “Division” —

“ 2 or ”;

- (b) in paragraph (a) by inserting after “information” —

10 “ to the Commissioner ”;

- (c) in paragraph (b) by inserting after “document” —

“ to the Commissioner ”.

35. Section 84 repealed

Section 84 is repealed.

15 **36. Part 4 Division 5, heading to Part 4 Division 6 and section 88 replaced**

Part 4 Division 5, the heading to Part 4 Division 6 and section 88 are repealed and the following Division, heading and sections are inserted instead —

20 “
Division 5 — State Administrative Tribunal’s jurisdiction as to complaints

84. Meaning of “complaint jurisdiction”

In this Division —

25 “**complaint jurisdiction**” means —

- (a) the Tribunal’s original jurisdiction as defined in the *State Administrative Tribunal Act 2004* section 3(1) in relation to an

- alleged contravention of a conciliation requirement that is the subject of a complaint referred to the Tribunal under section 67B or 76; or
- 5 (b) the Tribunal's review jurisdiction, as defined in the *State Administrative Tribunal Act 2004* section 3(1), in relation to an access or amendment decision that is the subject of a complaint referred to the
- 10 Tribunal under section 67B or 76.

85. Presiding member of Tribunal

- (1) When the Tribunal is exercising its complaint jurisdiction its presiding member has to be a legally qualified member.
- 15 (2) Terms used in subsection (1) relating to members of the Tribunal have the meanings given to them in the *State Administrative Tribunal Act 2004* section 3(1).

86. Tribunal to ensure non-disclosure of certain matter

- (1) In conducting a proceeding in its complaint jurisdiction the Tribunal has to avoid the disclosure of —
- 20 (a) exempt matter; or
- (b) information as to the existence or non-existence of a document containing matter exempt under clause 1, 2 or 5 of Schedule 1.
- 25 (2) If it is necessary to do so in the interests of justice, the Tribunal may by order permit a solicitor or counsel representing a party to a proceeding in its complaint jurisdiction to examine a document to which the proceeding relates.
- 30 (3) Permission may be given under subsection (2) on such terms and conditions as the Tribunal thinks fit.

- 5 (4) Without limiting subsection (3), permission may be given under subsection (2) on the condition that the solicitor or counsel does not disclose, to a party to the proceeding or to another person, exempt matter or matter of a kind referred to in subsection (1)(b).
- 10 (5) If in the opinion of the Tribunal it is necessary to do so in order to prevent disclosure of exempt matter or matter of a kind referred to in subsection (1)(b) the Tribunal may receive evidence and hear argument in the absence of the public and any party or person representing a party.
- 15 (6) The Tribunal is not to include exempt matter, or information of a kind referred to in subsection (1)(b) in its decision in a proceeding in its complaint jurisdiction or in reasons given for the decision.
- 20 (7) If the question of whether or not a document is a document of the agency is in issue, subsections (1) to (6) apply to the contents of the document as if those contents were exempt matter.

20 **87. Decisions of the Tribunal**

- 25 (1) In a proceeding in its complaint jurisdiction in relation to an access or amendment decision, the Tribunal has, in addition to any other power it has under this Act or the *State Administrative Tribunal Act 2004*, power to —
- 30 (a) review any decision that has been made by the agency in respect of the access application or application for amendment; and
- (b) decide any matter in relation to the access application or application for amendment that could, under this Act, have been decided by the agency.

s. 36

- (2) If it is established that a document is an exempt document, the Tribunal does not have power to make a decision to the effect that access is to be given to the document.
- 5 (3) Unless the Tribunal orders otherwise the Tribunal's decision under subsection (1) has effect from when it is made.
- (4) In a proceeding in its complaint jurisdiction relating to an alleged contravention of a conciliation requirement the Tribunal may —
- 10 (a) dismiss the complaint; or
- (b) find the complaint or any part of it substantiated and make an order that the agency comply with the conciliation requirement within the period (if any) specified in the order;
- 15 or
- (c) find the complaint or any part of it substantiated but decline to take any further action in relation to the matter.
- 20 **88. Restrictions under other laws not applicable**
- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to agencies, whether imposed under an enactment or other law, applies to the disclosure of information to the Tribunal when it is exercising its complaint jurisdiction.
- 25
- (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by an agency, or an officer of an agency, to the Tribunal when it is exercising its complaint jurisdiction.
- 30

88A. Secrecy

5 In relation to the functions of the Tribunal under or in connection with this Act, the *State Administrative Tribunal Act 2004* section 157 extends to any information acquired in the performance of those functions and is not limited to information about the affairs of a person.

Division 6 — Appeals from Tribunal's decisions as to complaints**88B. Terms used in this Division**

In this Division —

“**appeal**” means an appeal on any question of law arising out of any decision of the Tribunal on a complaint referred to it under section 67B or 76;

15 “**Supreme Court**” means the General Division of that court or the Court of Appeal, whichever is appropriate under the *State Administrative Tribunal Act 2004* section 105.

88C. Appeal from Tribunal's decision

- 20 (1) An appeal may be brought under the *State Administrative Tribunal Act 2004* section 105.
- (2) However there is no appeal in relation to a decision of the Tribunal as to —
- 25 (a) the deferral of the giving of access to a document; or
- (b) the charges to be imposed for dealing with the access application; or
- (c) the payment of a deposit under section 18.
- 30 (3) The *State Administrative Tribunal Act 2004* section 106 applies in respect of an appeal.

s. 37

88D. No access to exempt document

If it is established that a document is an exempt document the Supreme Court does not have power to make a decision to the effect that access is to be given to the document.

”.

37. Section 89 amended

(1) Section 89(1) is amended as follows:

(a) by deleting “subsections (2) and (3)” and inserting instead —

“ subsection (2) ”;

(b) by deleting “in review proceedings” and inserting instead —

“ on an appeal ”.

(2) Section 89(2) is amended by deleting “under section 85”.

(3) Section 89(3) is repealed.

38. Section 90 amended

(1) Section 90(1) is amended by deleting “review proceedings the Court” and inserting instead —

“ an appeal the Supreme Court ”.

(2) After section 90(1) the following subsections are inserted —

“

(1a) If it is necessary to do so in the interests of justice, the Supreme Court may by order permit a solicitor or counsel representing a party to an appeal to examine a document to which the appeal relates.

(1b) Permission may be given under subsection (1a) on such terms and conditions as the Supreme Court thinks fit.

(1c) Without limiting subsection (1b), permission may be given under subsection (1a) on the condition that the solicitor or counsel does not disclose, to a party to the appeal or to another person, exempt matter or matter of a kind referred to in subsection (1)(b).
5

(3) Section 90(3) is amended by deleting “in review proceedings” and inserting instead —
“ on an appeal ”.

(4) Section 90(4) is amended by deleting “, (2) and” and inserting instead —
“ to ”.

39. Section 91 amended

(1) Section 91(1) is amended by deleting “review proceedings” and inserting instead —
“ an appeal ”.

(2) Section 91(2) is repealed.

(3) Section 91(3) is amended by deleting “review proceedings have” and inserting instead —
“ appeal has ”.

40. Section 92 amended

Section 92(1) and (2) are amended by deleting “review proceedings.” and inserting instead —
“ an appeal. ”.

41. Section 93 amended

Section 93 is amended by deleting “review proceedings” and inserting instead —
“ an appeal ”.

46. Section 106 amended

Section 106(1) is amended by inserting after “for the purposes of giving effect to this Act” —

“

5 or as the result of a decision made, in good faith, not to claim that a document is an exempt document or not to delete exempt matter from a copy of a document

”.

47. Section 111 amended

10 Section 111(2) is amended as follows:

(a) by deleting paragraph (h) and inserting instead —

“

(h) the number of complaints received by the Commissioner; and

15

”;

(b) by deleting paragraph (j) and inserting instead —

“

(j) the number of complaints which the Commissioner decided under section 67 not to deal with, or to stop dealing with; and

20

(ja) the number of complaints resolved by conciliation; and

(jb) the number of complaints referred to the Tribunal; and

25

(jc) details of any review under section 63(2)(g) including —

(i) the outcome of the review; and

(ii) any recommendations made as a result of the review; and

30

(iii) any response to those recommendations; and

”;

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- (c) after each of paragraphs (a) to (g) and (i) by inserting —
“ and ”.

48. Section 112 amended

Section 112(2) is amended after paragraph (b) by deleting the
full stop and inserting —

“

; and

- (c) the extent to which —

(i) a fee paid for lodging an access
application; or

(ii) an advance deposit paid in relation to an
access application under section 18,

is to or may be refunded to the applicant in the
event of —

(iii) the applicant withdrawing the
application or being regarded as having
withdrawn the application; or

(iv) the agency refusing to deal with the
application.

”.

49. Section 113 replaced

Section 113 is repealed and the following section is inserted
instead —

“

113. Review of Act

- (1) In this section —

“**review day**” means the expiry day of a period of
5 years after —

(a) the day of the coming into operation of the
*Freedom of Information Amendment
Act 2007* section 49; or

(b) the day on which a report is tabled in the Legislative Assembly under subsection (3).

(2) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after each review day.

(3) The Minister is to prepare a report based on each review and is to cause the report to be tabled before each House of Parliament as soon as is practicable after it is prepared.

”.

50. References to “closest relative” altered

The Act is amended in each place listed in the Table to this section by deleting “closest” and inserting instead —

“ nearest ”.

Table

s. 32(2)(b)	s. 32(4) (both places)
s. 32(3)	s. 45(2) (both places)

51. References to “intellectually handicapped person” altered

The Act is amended in each place listed in the Table to this section by deleting “an intellectually handicapped person” and inserting instead —

“ a person with a mental disability ”.

Table

s. 23(5)	s. 32(4)
----------	----------

52. Schedule 1 amended

(1) Schedule 1 clause 5(2) is amended as follows:

(a) in paragraph (a) by deleting “Bureau of Criminal Intelligence, Protective Services Unit” and inserting instead —

“ State Intelligence Division, Dignitary Protection Unit ”;

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(b) in paragraph (b) by inserting after “Unit” —
“ or Justice Intelligence Service ”.

(2) Schedule 1 clause 8(1) is amended by deleting “be a breach of confidence for which a legal remedy could be obtained.” and inserting instead —

“ found an action for breach of confidence. ”.

(3) Schedule 1 clause 8(3) is amended by deleting “enable a legal remedy to be obtained” and inserting instead —

“ found an action ”.

(4) After Schedule 1 clause 15 the following clause is inserted —

“

16. Information protected by Aboriginal tradition

Exemption

(1) Matter is exempt matter if its disclosure to any person or class of persons is prohibited by Aboriginal tradition.

Limit on exemption

(2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

Definition

(3) In this clause —

“**Aboriginal tradition**” means the body of traditions, observances and customs of Aboriginal people generally or of a particular community or group of Aboriginal people.

”.

53. Schedule 2 amended

Schedule 2 is amended as follows:

- (a) by inserting before the item “The State Government Insurance Corporation.” —

5

“

The State Administrative Tribunal.

”;

- (b) by deleting “The Bureau of Criminal Intelligence, Protective Services Unit,” and inserting instead —

10

“

The State Intelligence Division, Dignitary Protection Unit,

”.

- (c) by inserting after “The Internal Investigations Unit” —

“ or Justice Intelligence Service ”.

54. Glossary amended

- (1) The Glossary clause 1 is amended as follows:

- (a) by deleting the definition of “exemption certificate”;
- (b) by inserting in the appropriate alphabetical positions —

20

“

“**access or amendment decision**” means a decision mentioned in section 65(1) or (3);

“**action**” has the meaning given in the *Limitation Act 2005* section 3(1);

“**complaint**” means a complaint under section 65;

25

“**conciliation proceedings**” means proceedings conducted by the Commissioner to deal with a complaint;

“**conciliation proceedings record**” means a document prepared under section 71(1) or (3);

30

“**conciliation requirement**” has the meaning given in section 71(1)(b);

s. 54

“**conciliator**” has the meaning given in section 70(5)(b);

“**deal with**” a complaint has, in the case of the
Commissioner, the meaning given in section 62A(1);

5 “**judicial office**” includes an office as a member of a
tribunal;

“**mental disability**” has the meaning given in the
Guardianship and Administration Act 1990
section 3(1);

10 “**nearest relative**” has the meaning given in the
Guardianship and Administration Act 1990
section 3(1);

“**Tribunal**” means the State Administrative Tribunal.

”;

15 (c) in the definition of “Corrective Services” by deleting
“the division concerned with corrective services in”;

(d) in the definition of “principal officer” by inserting after
paragraph (d) —

“

20 (da) in relation to a court — an officer of the court
declared by rules of court or the regulations to be
the principal officer of the court (not being a
person holding a judicial office or an office the
functions of which include judicial functions);

”;

25 (e) in paragraph (e) of the definition of “principal officer”
by inserting after “being” —

“ a court or ”;

(f) in the definition of “third party” by deleting “33.” and
inserting instead —

30 “ 33; ”.

- (2) After the Glossary clause 2(4) the following subclause is inserted —

“

- (5) If a division, unit or service mentioned in subclause (2) or (3) is renamed, a reference in this Act to that division, unit or service includes a reference to it as so renamed.

”.

- (3) The Glossary is amended in each place listed in the Table to this subsection by deleting “Bureau of Criminal Intelligence, Protective Services Unit” and inserting instead —

“ State Intelligence Division, Dignitary Protection Unit ”.

Table

cl. 2(2)

cl. 6(1)

- (4) The Glossary is amended in each place listed in the Table to this subsection by inserting after “Unit” —

“ or Justice Intelligence Service ”.

Table

cl. 2(3)

cl. 6(2)