

FREEDOM OF INFORMATION BILL 1981

Outline

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FREEDOM OF INFORMATION BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Industrial Relations
the Honourable Ian Viner M.P.)

FREEDOM OF INFORMATION BILL 1981

Outline

The Freedom of Information Bill 1981 is based upon the Freedom of Information Bill 1978, which was introduced into the Senate on 9 June 1978. That Bill was subsequently referred to the Senate Standing Committee on Constitutional and Legal Affairs. The Report of the Committee recommended a number of changes to the 1978 Bill. This Bill includes a number of those recommendations accepted by the Government - see the Statement in the Senate by the Attorney-General on 11 September 1980 - and some further amendments made in the Senate.

The Bill will give members of the public an enforceable right to access, subject to specified exceptions, to documents in the possession of Departments, other than the Parliamentary Departments, and of statutory authorities and other Commonwealth agencies and to official documents in the possession of Ministers.

The Bill will also require the publication or making available of information concerning the functions of Departments, authorities and agencies, and of procedural manuals, and other similar material, which may affect persons in their dealings with an agency.

The access provisions do not apply to certain classes of documents (principally documents more than 30 years old, documents in existence prior to the Act (with certain exceptions), and documents published for sale). Further, access may be refused to a document which falls within one of the exceptions or exemptions specified in the Bill. In all cases, a refusal of access is reviewable, either by the Administrative Appeals Tribunal or the Document Review Tribunal created by the Bill.

NOTES ON THE CLAUSES OF THE BILLPART I - PRELIMINARY

The first two clauses of the Bill provide for the short title and commencement of the legislation. Clause 2 provides, in particular, that the several Parts shall come into operation on such respective dates as are fixed by Proclamation. This provision will enable the legislation to come into operation in a series of stages, if necessary.

Clause 3 - Object

2. Sub-clause 3(1) sets out the object of the Act as being to extend the right of the Australian community to access to information in the possession of the Commonwealth Government.

3. Sub-clause 3(2) provides guidelines for the interpretation of the Act. The sub-clause seeks to aid the judicial interpretation of the legislation by expressly providing that it is the intention of the Parliament that the provisions of the Act shall be interpreted to further the object set out in sub-clause 3(1) and that discretions conferred by the Act shall be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

Clause 4 - Interpretation

4. Sub-clause 4(1) sets out definitions of a number of words and expressions for the purpose of the legislation. The more important are detailed below:

'agency' is defined as a Department or prescribed authority.

- . 'Department' is defined as a Department of the Australian Public Service other than the Parliamentary Departments. The present Bill is concerned with access to information about the activities of the Executive Government and the administration of the courts.
- . 'document' is widely defined to include any written or printed matter; any map, plan or photograph; and any sound recording, cinematograph film, microfilm, computer and other means by which information may be stored or retrieved. It does not include library material maintained for reference purposes.
- . 'exempt document' is defined as meaning
 - (a) a document that is an exempt document by virtue of one or more of the provisions of Part IV;
 - (b) a document in respect of which an agency is exempt from the operation of the legislation by virtue of clause 6 or of regulations made under that clause; or
 - (c) an official document of a Minister that contains matter that does not relate to the affairs of an agency or of a Department of State.
- . 'official document of a Minister' is defined as a document in the possession of a Minister that relates to the affairs of an agency or a Department of State. It does not include documents of a party political or personal kind, or that relate to a Minister's activities as a Member of Parliament.
- . 'prescribed authority' is defined in wide terms so as to bring all statutory bodies and other agencies performing functions of the Commonwealth Government within the scope of the legislation on as wide a basis as possible. The A.C.T. House of Assembly, the Legislative Assembly of the Northern Territory and the

5.
defin
Claus
6.
to t
excep
admin
Claus
7.
Conci
arbit
does
docum
The t
set o
of the
Clause
8.
Part
specif
purpos
cases,
access

Legislative Assembly of Norfolk Island are excluded. This definition of prescribed authority must be read in conjunction with sub-clause 7(1) and Part I of the Schedule. The bodies there listed are deemed not to be prescribed authorities for the purpose of the legislation.

5. Sub-clauses 3(2) to 3(4) are supplementary to the definition of 'prescribed authority'.

Clause 5 - Act to apply to courts in respect of administrative matters

6. This clause has the effect of making courts subject to the Act. The Act does not apply to a request for access except in respect of documents which relate to matters of an administrative nature. The Act is not to apply to the Judges.

Clause 6 - Act to apply to certain tribunals in respect of administrative matters

7. This clause has the effect of making the Australian Conciliation and Arbitration Commission and certain other arbitral tribunals and authorities subject to the Act. The Act does not apply to a request for access except in respect of documents which relate to matters of an administrative nature. The tribunals and authorities to which this clause applies are set out in Schedule 1. The Act is not to apply to the members of the tribunals.

Clause 7 - Exemption of certain bodies

8. Sub - clause 7(1) provides that the bodies listed in Part I of Schedule 2 and the person holding the office specified in that Part are not prescribed authorities for the purposes of the Act. That is, the Act will not apply in those cases, and will not entitle a request to be made to them for access to documents.

9. Sub-clause 7(2) provides that the agencies listed in Part II of Schedule 2 are exempt from the operation of the Act in relation to the documents referred to in that Part in relation to them. The effect of this is that documents so referred to are exempt documents, irrespective of the contents of those documents (see the definition of 'exempt document' in sub-clause 4(1)).

10. Sub-clause 7(3) defines the term 'competitive commercial activities' for the purposes of Part II of Schedule 2. It is only activities carried on in competition with non-government bodies which come within the term.

11. Sub-clause 7(4) provides an interpretative provision for the purposes of references in Part II of Schedule 2 to documents in respect of particular activities of agencies.

12. obl
ava
age
to
hav
ena
sho
esta
to
man
a p

Clau

13. than
resp
out
indi
othe
must
the
agen
docu
paym
publ
docu
publ
faci
of t
and
resp
publ
least

PART II - PUBLICATION OF CERTAIN DOCUMENTS
AND INFORMATION

12. Part II comprises clauses 8 to 10, which impose obligations on agencies to publish, or otherwise make available to the public, documents of certain kinds about agency functions and activities. These provisions are intended to ensure that a member of the public who has or wishes to have dealings with the Commonwealth can obtain information enabling him to ascertain what agency or part of an agency he should approach and what procedures he should follow. The establishment of a body of 'secret' agency practice is thereby to be avoided. In particular, these provisions will require many departmental manuals to be made available to the public, a practice already followed by a number of Departments.

Clause 8 - Publication of Information concerning functions and documents of agencies

13. Sub-clause 8(1) requires the publication, not later than 12 months after the commencement of Part II, by the responsible Minister of each agency of a statement which sets out particulars of its organisation and functions and which indicates, as far as practicable, its decision-making and other powers affecting members of the public. The statement must include details of arrangements for consultation between the agency and outside persons or bodies in respect of the agency's functions. The statement must show what categories of documents of the agency are available for inspection upon payment of a fee, what categories of documents have been published by the agency for sale, and what categories of documents are customarily made available by the agency to the public free of charge. Details must be published of the facilities, if any, provided by the agency to enable members of the public to obtain physical access to agency documents, and of particular procedures of the agency which apply in respect of requests for access under the Act. The statements published under this sub-clause must be brought up to date at least once each year.

14. Sub-clause 8(2) requires the Minister, when approving the form of the statement published under sub-clause 7(1), to have regard to the need to assist members of the public to exercise effectively their rights under the legislation.

15. Sub-clause 8(3) permits the obligation to publish a statement required by sub-clause 8(1) to be fulfilled by inclusion in the Commonwealth Government Directory rather than by publishing it as a separate document.

16. Sub-clause 8(4) provides that this clause does not require the publication in the statement of any matter that would be exempt from disclosure under the legislation. Hence, an agency is not required to publish information about functions the existence of which is to be kept confidential on grounds, for example, of defence or national security.

17. Sub-clause 8(5) applies to agencies which come into existence in the future. Such an agency will be required to publish statements under sub-clause 8(1) within 12 months of the day on which it comes into existence.

Clause 9 - Certain documents to be available for inspection and purchase

18. The purpose of this clause is to make available to the public documents which have sometimes been described as 'hidden law' that agencies apply in making decisions. Members of the public will be able to gain access to this information, and will not be prejudiced by lack of knowledge of agency requirements and procedures.

19. Sub-clause 9(1) provides that the clause applies to manuals and other documentary material provided by an agency for use by its officers in making decisions or recommendations relating to enactments or schemes administered by the agency. It does not apply to documents which are available to the

public because they are published otherwise than by the agency concerned. Consequently, it does not apply, for example, to law reports published by a private publishing organisation. Similarly, it does not apply to documents published by another agency.

20. Sub-clause 9(2) requires an agency to make available for inspection and purchase copies of the documents referred to in sub-clause 9(1) above, and to publish in the Gazette not later than 12 months after the commencement of Part II an index of those documents and the places where copies may be inspected and purchased. The details published in the Gazette must be brought up to date at least once during each succeeding 12 month period.

21. Sub-clause 9(3) provides that the obligation to cause manuals and the like to be available for inspection and purchase - see paragraph 9(2)(a) - is not required to be complied with in full before the end of 12 months after the commencement of Part II of the Act. Nevertheless, the sub-clause requires that, before the expiration of that period, that obligation shall be complied with as far as is practicable. Thus the documents in question should be made available progressively as they are brought into a form appropriate for inspection and purchase.

22. The effect of sub-clause 9(4) is that the public is not to be denied access to a manual merely on the ground that it contains some exempt matter. If it is practicable to do so, the manual must be re-written so as to exclude that exempt matter and the re-written manual made available to the public. For example, in the case of an agency responsible for making grants of money to organisations, a manual may describe both the conditions that an organisation must comply with to be eligible for a grant and instructions on checks to be made on the activities of the organisation to ensure that the money is properly applied. To publish the latter may well defeat the purpose of making the checks. In such a case, the sub-clause would require the manual to be re-written to delete this latter material.

23. Sub-clause 9(5) permits the Minister administering the freedom of information legislation to take into account any special circumstances which may make it unreasonable for an agency to list details of all its manuals or to make copies of them available within the 12 months' time limit. Should he be satisfied, after consultation with the Minister responsible for the agency, that such circumstances exist, he may give a written extension of time.

24. Sub-clause 9(6) permits the Minister to give written directions modifying the requirements of this clause in so far as it applies to a particular agency. He may only do so, however, where he has consulted the Minister responsible for that agency and is satisfied that, as a result of the form or nature of documents within the agency's control at the date the Part comes into operation, compliance with the clause would unreasonably divert the resources of the agency from its normal operations.

25. Sub-clause 9(7) requires that the details of any extensions or modifications which are permitted pursuant to sub-clauses 9(5) and 9(6) are to be included in the Minister's annual report tabled in Parliament. That report must also show the extent to which agencies have complied with this clause during the previous year.

26. Sub-clause 9(8) requires that the principal officer of an agency take all reasonable steps to ensure that a person who seeks to inspect or to purchase a document to which this clause applies has his attention drawn to any other document to which the clause applies and which has come into existence since the statement under paragraph 9(2)(b) was published.

27. Sub-clause 9(9) applies the obligations of sub-clauses 9(2) and 9(3) to agencies which come into existence in the future.

Clause 10 - Unpublished documents not to prejudice public

28. Sub-clause 10(1) provides that where a document referred to in clause 9 contains a rule, guideline or practice (not being a provision of an enactment) affecting the manner of exercise of an agency function and an agency fails to make available the document as required by the clause, a person who was not aware of the rule, guideline or practice is not to be prejudiced by the application of that rule, guideline or practice if he could have lawfully avoided the prejudice had he been aware of the rule, guideline or practice.

29. The intention of clause 10 is that a person should not be in a worse position through not knowing an agency's rule or practice than he might have lawfully put himself in had he known of the rule or practice. Suppose, for example, that an agency administering a scheme under which grants are made to voluntary organisations has a rule that applications must be made in a certain form and be lodged by a certain date. The agency would not be entitled to refuse a grant on the grounds that an application came in late and was not in the proper form unless the rule had been published in accordance with clause 9.

30. Sub-clause 10(2) has the effect that sub-clause 10(1) does not apply until the expiration of the period provided by clause 9 for making the relevant material available.

31. It should be noted that clauses 9 and 10 deal only with administrative rules and practices. It should be noted that Commonwealth legislation already requires the publication of subordinate legislation.

PART III - ACCESS TO DOCUMENTS

32. This Part establishes the right to access to documents to be conferred by the Bill, and specifies the procedural requirements to be followed in applying for access. It also sets out procedural matters to be followed by agencies in dealing with requests, including the time limits for responding to requests.

Clause 11 - Right of access

33. Clause 11 gives every person a legally enforceable right of access to agency documents and to official documents of Ministers, other than exempt documents. This clause embodies the basic principle of the legislation, which is that an agency must justify the withholding of a document, instead of the person seeking access having to justify his request. There is no requirement that the person seeking access be required to show any interest.

Clause 12 - Part not to apply to certain documents

34. Sub-clause 12(1) provides that Part III does not give a right of access to documents which are otherwise available to the public. The sub-clause specifies three main classes of such documents:

- . the first comprises Commonwealth records that are in the custody of the Archives or of a Commonwealth institution, that are not exempt documents within the meaning of Division 3 of Part V of the Archives Bill 1981 and that are more than 30 years old. Access to these documents is governed by the Archives Bill;

- . the second class comprises documents that are open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or charge. Thus, present procedures for inspection of land title records, company records, the Register of Patents and patent specifications that are open to public inspection in accordance with the provisions of other enactments will not be affected by the freedom of information legislation;
- . the third class comprises documents that are otherwise available for purchase by the public, for example, from the Australian Government Publishing Service.

35. The rationale of this clause is that, where statutory provisions or other arrangements exist that provide for other means of access to particular documents, it would be inappropriate for access to be granted under the freedom of information legislation rather than under those statutes or arrangements.

36. Sub-clause 12(2) has the effect that, with two exceptions, there is no general right of access under the Act to documents in the possession of a Minister or an agency when the Act comes into force. The first exception is in respect of a document which relates to the personal affairs of the applicant and which became a document of the agency or an official document of the Minister not earlier than 5 years before the date of commencement of Part III. The second exception is in respect of a prior document which is necessary to the understanding of a document to which a person has lawfully had access. This clause does not, however, affect the provisions of Part II relating to access to departmental manuals and the like.

37. Sub-clauses 12(3) and 12(4) provide for the making of regulations which would modify the provisions of sub-clause 12(2) so as to permit greater access to prior documents.

38. Sub-clause 13(1) deals with documents in the collections of the War Memorial, the National Library, the Museum of Australia and the Australian Archives. The sub-clause provides that such documents are not to be deemed to be documents of an agency, for the purposes of the legislation, if they were placed in the collection or custody of the institution concerned by or on behalf of a person (including a Minister or former Minister) other than an agency. Because these institutions are agencies for the purposes of the Act, this provision is necessary to ensure that private collections of papers deposited with these institutions are not available for access under the Freedom of Information Act. This protection extends to collections of ministerial papers placed in one of these institutions. The exception does not, however, apply in the case of ministerial papers where the Minister continues to hold ministerial office and retains a right of access to those papers - see the definition of 'official document of a Minister' in sub-clause 4(1).

39. Sub-clause 13(2) provides that a document that has been placed in one of the institutions referred to in sub-clause 12(1) by an agency shall be deemed to be in the possession of that agency. The effect of sub-clause 13(2) will be to make it impossible for an agency to avoid the obligation to grant access to documents by depositing its documents with the Australian Archives.

40. to Aus the Com the the Roy inf in 41. inf pro und Cla 42. pre or oth do inf for oth und Cla 43. wri pro 44. doc nec

40. Sub-clause 13(3) contains special provisions relating to records of a Royal Commission in the custody of the Australian Archives. A Royal Commission is not an agency for the purposes of the legislation. If, on the termination of the Commission, however, its records are placed in the custody of the Australian Archives, sub-clause 13(3) deems that they are then in the possession of the Department administering the Royal Commissions Act 1902. For the purposes of freedom of information legislation, they are then treated as a document in the possession of that Department.

41. Sub-clause 13(4) ensures that the freedom of information legislation does not in any way affect the provision by the Australian Archives of access to documents under the Archives legislation.

Clause 14 - Access to documents apart from Act

42. Clause 14 declares that the Act is not intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by the Act, where they can properly do so or are required by law to do so. The freedom of information legislation is not intended to be a statutory code for the provision of access to documents to the exclusion of other legislation, legal requirements or proper practices under which access may be provided.

Clause 15 - Requests for access

43. Sub-clause 15(1) provides that a person may make a written request for access to a document. There are no provisions that special forms be used.

44. Sub-clause 15(2) requires a request for access to a document to provide such information as is reasonably necessary to enable the document to be identified.

45. Sub-clauses 15(3) and 15(4) direct that an agency take reasonable steps to assist a person who wishes to make a request to it. For example, the agency is under a duty to provide reasonable assistance to a person to enable him to provide sufficient information to identify the document to which he seeks access. Similarly, a person may approach the incorrect agency seeking a document. In that case, the agency must take reasonable steps to see that he directs his request to the appropriate agency or Minister.

Clause 16 - Transfer of requests

46. Sub-clause 16(1) enables an agency to which a request is made to transfer the request to another agency in two circumstances. The first is where the requested agency does not have the document concerned but knows that it is in the possession of the other agency. The second is where the subject matter of the document concerned is more closely connected with the functions of the other agency.

47. Sub-clause 16(2) deals with the case where a request is made for access to a document which originated with or has been received from an agency exempt from the operation of the Act by virtue of clause 7 and the subject matter of the document is more closely connected with the functions of that exempt agency. In such a case, the request is to be transferred to the Department whose Minister is responsible for administering the legislation under which the exempt agency is established.

48. Sub-clause 16(3) provides for the case where a request is made to an agency for access to a document that originated with or has been received from another agency and the subject matter of the document is more closely connected with functions of that other agency in respect of which that other agency is exempt from the provisions of the legislation by virtue of clause 7. In that case the request is to be transferred to that other agency.

49. Sub-clause 16(4) provides for the person seeking access to be informed of the transfer of his request to another agency. It also provides for the agency transferring the request to transfer the document in question to the other agency if that is necessary.

50. Sub-clause 16(5) has the effect, first, that the transfer of a request to another agency imposes on that other agency the obligation to deal with the request and, secondly, that the time for dealing with the request runs from the date on which the request was received by the transferring agency. This ensures that the person seeking access is not disadvantaged by any delay in making the transfer.

Clause 17 - Requests involving use of computers, etc.

51. Sub-clause 17(1) provides that where a request is made for information stored in computer and similar systems, the request is to be treated as a request for a document or documents if the information can be produced in written form by using a computer or other equipment normally available to the agency. If the information is stored on a sound recording, a request for access to it must also be treated in the same way if a transcript of the recording can be made.

52. Sub-clause 17(2) enables an agency to refuse a request that would require the production of a document under sub-clause 16(1) where the production of the document would interfere unreasonably with the operations of the agency. An appeal lies to the Administrative Appeals Tribunal against such a refusal.

Clause 18 - Access to documents to be given on request

53. Sub-clause 18(1) provides that where a request for access to a document is made in writing and in accordance with the requirements of sub-clause 15(2), and payment is made of any charge that is required under the regulations to be paid before access is granted, access to the document is to be given in accordance with this legislation.

54. Sub-clause 18(2) provides that access is not required to be given to a document at a time when the document is an exempt document. That a document is an exempt document at a particular time does not mean that it always remains an exempt document. Where access to a document is denied, the document must be an exempt document at the time when that denial is made.

Clause 19 - Time within which formal requests to be decided

55. Sub-clause 19(1) specifies the requirements that must be observed in making a request if the Minister or agency to which the request is made is to be obliged to respond within the time limits specified in the sub-clause. The request must be made in writing, be expressed to be made in pursuance of this legislation, contain an address for service in Australia and be sent either by post or personally to an address prescribed under the regulations in relation to the agency or Minister concerned. On receiving such a request, the agency or Minister must take all reasonable steps to make a decision and to notify the applicant of it as soon as practicable and, in any event, not later than 60 days after the receipt of the request.

56. Sub-clause 19(2) allows for the 60 day time limit to be reduced by regulation. It, therefore, takes into account that experience in the operation of the legislation may enable agencies to respond to requests in a shorter period than the 60 day time limit set in the Bill.

Clause 20 - Forms of access

57. Sub-clause 20(1) sets out the various forms in which access to a document may be given. The applicant may be allowed to inspect the document, he may be provided with a copy of it, he may be provided with the means of viewing a film or hearing a sound recording or he may be provided with a transcript of a sound recording or of shorthand notes. In the case of information stored in a computer, access is to be given to a print-out from the computer - see clause 17. The forms of access are not mutually exclusive and access may be given in more than one form.

58. Sub-clauses 20(2) and 20(3) require that access shall be given in the form requested by the applicant unless to do so would interfere unreasonably with the agency's operations or the Minister's functions, as the case may be, would be detrimental to the preservation of the document, would be inappropriate having regard to the physical nature of the document or would involve an infringement of copyright (other than that owned by the Commonwealth, an agency or a State) in respect of a matter not relating to the affairs of an agency. Sub-clauses 20(2) and 20(3) must also be read in conjunction with clause 22 which provides for exempt matter to be deleted where that is possible and for access to be given, where it is reasonably practicable to do so, to a copy from which that exempt matter has been so deleted.

59. Sub-clause 20(4) provides that where, pursuant to this clause, an applicant is refused access in the form requested but is given access in another form, the applicant shall not be required to pay a greater charge than the charge he would have been liable to pay had the access been given in the form requested.

60. An appeal lies to the Administrative Appeals Tribunal against a decision to give access in a form other than that requested by the applicant - see sub-clause 53(1).

Clause 21 - Deferment of access

61. Sub-clause 21(1) provides that access may be deferred where:

- (a) publication of the document concerned is required by law;
- (b) the document concerned has been prepared for presentation to Parliament or being made available to a particular person or body;
- (c) premature release of the document concerned would be contrary to the public interest; or
- (d) a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made available.

62. Sub-clause 21(2) requires the agency or Minister to inform the applicant of the reasons for the deferment and, if it is practicable to do so, to inform him of the period of the deferment.

63. There is a right of appeal to the Administrative Appeals Tribunal under clause 53 against a decision to defer access other than a decision made under paragraph 21(1)(d).

Clause 22 - Deletion of exempt matter

64. Although, generally speaking, the purpose of the Bill is to give a right of access to documents already in existence and not to require agencies to re-write documents or to produce new documents to supply information, there will be many cases where a document is an exempt document because only part of the document contains exempt matter and that matter

may be deleted. Sub-clause 22(1) accordingly provides that where it is possible and reasonably practicable to prepare a copy of the document with the exempt matter deleted, and the copy document so prepared is not thereby rendered misleading, the applicant shall be given access to such a copy unless it appears that he would not wish to have access to such a copy. Whether it is reasonably practicable to prepare a copy of the document with the exempt matter deleted is to be determined according to the nature and extent of the work involved in making the deletions and the resources available for that work.

65. Sub-clause 22(2) provides that an applicant provided with such a copy is to be informed that deletions have been made and the grounds for the deletions. Under clause 26, an applicant must be given reasons for a decision to refuse access in accordance with a request. This sub-clause provides, however, that reasons need not be given for refusing access to the original document unless the applicant specifically requests that they be given.

66. An appeal lies to the Administrative Appeals Tribunal under clause 53 from a refusal to grant access in accordance with a request. Thus, the Tribunal would have power to review a decision that it is not possible or reasonably practicable to prepare a copy of a document with exempt material deleted.

Clause 23 - Decisions to be made by authorized persons

67. Clause 23 provides that a decision on a request made to an agency may be made either by the Minister responsible for the agency, the principal officer of the agency or, subject to any regulations limiting delegation, by an officer of the agency who is authorized to do so.

Clause 24 - Requests may be refused in certain cases

68. Sub-clause 24(1) provides that a request for access to documents identified only by reference to subject matter may be refused if the work involved in giving access to the documents to which the request relates would substantially and unreasonably divert the resources of the agency from its other operations or would interfere substantially and unreasonably with the performance by the Minister of his functions, as the case may be. In determining this matter, regard is to be had to the number and volume of the documents concerned and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or the Minister's office.

69. Sub-clause 24(2) permits a refusal of a request for access, without having searched for or identified the documents to which the request is directed, if the request relates to a substantial number of documents and the nature of the documents, as described in the request, is such that each of the documents as so described would be an exempt document.

70. If, however, the agency or Minister concerned has reason to believe that any of the documents to which the request relates contain matter which is not exempt, that it would be practicable to grant access to a copy of such a document with the exempt matter deleted and that the applicant would wish to have access to that copy, then sub-clause 24(2) does not apply.

71. Sub-clause 24(3) provides that a request for access may not be refused on the ground that it does not sufficiently identify the documents to which access is sought or that it is directed to documents identified only by subject matter unless the applicant has first been given a reasonable opportunity for consultation with a view to his making the request in a form that would remove the ground for refusal.

Clause 25 - Information as to existence of certain documents

72. Sub-clause 25(1) entitles an agency or Minister to withhold information as to the existence or non-existence of a document if disclosure of that information would be prejudicial to the public interest for a reason specified in sub-clause 33(1) or would affect law enforcement for a reason specified in sub-clause 37(1).

73. Sub-clause 25(2) deals with the case where a request is made for access to a document and the document is or, if it existed, would be of such a kind that information about its existence might be withheld under sub-clause 25(1). In such a case, the agency or Minister dealing with the request may notify the applicant that the existence of the document is neither confirmed nor denied but that, if the document existed, it would be an exempt document. Reasons for giving such a notice must be furnished in accordance with clause 26, and the giving of such a notice is to be treated for the purpose of internal review under clause 54 or appeal to the Administrative Appeals Tribunal under clause 55 as if it were a decision refusing access to a document.

Clause 26 - Reasons and other particulars of decisions to be given

74. Sub-clause 26(1) requires that where access in accordance with a request is refused or deferred written notice of the decision is to be given to the applicant, setting out the findings on material questions of fact and the reasons for the decision and including (in the case of an agency document) the name and designation of the officer who made the decision. The notice must also inform the applicant of his right to apply for a review of the decision.

75. Sub-clause 26(2) provides that exempt matter is not required to be included in a notice given under sub-clause 26(1).

Clause 27 - Procedure on request in respect of documents relating to business affairs, etc.

76. This clause applies where a request is made for access to a document containing information relating to the business or professional affairs of a person, or the business, commercial or financial affairs of an organisation or undertaking and that information may be of a confidential character. It provides a procedure by means of which the person to whom or the undertaking to which this information relates may object to access being given to the document. It also provides a procedure for informing that person or undertaking if a decision is made to give access to the document and allowing that person or undertaking to appeal to the Administrative Appeals Tribunal against such a decision.

77. Sub-clause 27(1) directs that, where it is reasonably practicable to do so, the agency or Minister concerned must not make a decision on such a request before the person or undertaking has been given a reasonable opportunity to argue that the document is exempt under clause 43 and the argument put forward has been considered. In considering whether it is reasonably practicable to consult that person or undertaking, regard must be had to the time limits imposed by clause 19.

78. Sub-clause 27(2) provides that written notice of a decision that a document in respect of which submissions have been made under sub-clause 27(1) is not exempt under clause 43 is to be given both to the applicant and to the person or undertaking concerned. The sub-clause also provides that access may not be given in such a case until the period for lodging an appeal to the Administrative Appeals Tribunal has expired or, if any appeal is made, that appeal has been heard and the decision to grant access confirmed.

Clause 28 - Information Access Offices

79. Sub-clause 28(1) requires the Minister administering the legislation to publish, within 12 months of the commencement of the Act, a statement setting out the addresses of the Commonwealth offices throughout Australia which are to be Information Access Offices.

80. Sub-clause 28(2) provides that access is to be given to an applicant, if he so requests, at the Information Access Office which is nearest to his residence and which has the appropriate facilities available to provide access in the form requested.

81. Sub-clause 28(3) declares that an agency or a Minister is not prevented by this clause from giving access, in accordance with sub-clause 20(3), in a form other than the form requested.

82. Sub-clause 28(4) provides that, where a person is provided with access at an Information Access Office, he shall not be required to pay any charge additional to the charge he would have been required to pay had he been given that access at another place.

Clause 29 - Persons to be notified of liability to pay charges

83. Clause 29 requires that an agency or a Minister, who makes a decision that an applicant for access is liable to pay a charge, shall provide a notification of the decision and a statement setting out the basis on which the amount of that charge is calculated to the applicant.

Clause 30 - Charge may, in certain circumstances, be remitted
in whole or in part

84. This clause sets out the procedure for remission of charges. Sub-clause 30(1) permits the making of an application for remission to the agency to which, or the Minister to whom, the request for access was made.

85. Sub-clause 30(2) provides that, where an application is made under sub-clause 30(1), a charge may be remitted in whole or in part and that a decision on the application for remission is to be made as soon as practicable but not later than 28 days after the date on which the application was received by the agency or the Minister concerned.

86. Sub-clause 30(3) sets out the matters which the agency or Minister is required to take into account in determining whether or not to remit a charge. They shall include:

- (a) whether the payment of the charge would cause financial hardship;
- (b) whether the document to which access is sought relates to the personal affairs of the applicant; and
- (c) whether the giving of access is in the general public interest or in the interest of a substantial section of the public.

87. Sub-clause 30(4) applies when an application is made pursuant to sub-clause 30(1) and 28 days have elapsed without the applicant's having been notified of a decision on his application.

88. Sub-clause 30(5) provides a definition of charge.

Clause 31 - Certain periods to be disregarded for the purposes of section 19

89. This clause deals with the case where an applicant is required to pay a deposit on account of a charge. It is inherent in the idea of requiring the deposit that an agency should be able to refrain from dealing with a request until the deposit has been paid.

90. Sub-clause 31(1) provides for each day from the day on which the applicant receives a notification pursuant to clause 29 until the 'relevant day' to be disregarded in computing the 'prescribed period'.

91. Sub-clause 31(2) provides that the 'prescribed period' is the period determined pursuant to clause 19.

92. Sub-clause 31(3) provides that the 'relevant day' is either the day on which the required deposit is paid or, where such a deposit is reduced or remitted totally, the day on which the decision to remit totally is made or the day on which the reduced amount is paid.

PART IV - EXEMPT DOCUMENTS

Clause 32 - Interpretation

93. Clause 32 provides a rule of interpretation for Part IV, to ensure that the scope of an exempt clause, or the application of an exemption clause to a document, is not limited by the existence of any other exemption provision.

Clause 33 - Documents affecting national security, defence, international relations and relations with States

94. Sub-clause 33(1) provides that a document is an exempt document if its disclosure would be contrary to the public interest for the reason that the disclosure could reasonably be expected to cause damage to the security or defence of the Commonwealth, international relations or relations with the States or the Northern Territory. A document is also exempt under this sub-clause if it would disclose information obtained in confidence from the Government of another country or of a State or the Northern Territory.

95. Sub-clause 33(2) provides that where a Minister is satisfied that disclosure of a document would be contrary to the public interest for a reason referred to in sub-clause 33(1), he may give a certificate to that effect. That certificate establishes conclusively that the document is an exempt document so long as the certificate remains in force. The question whether there are reasonable grounds for the claim that a document is exempt under this clause may be referred to the Document Review Tribunal (sub-clause 58(4)).

96. Only some parts of a document may contain matter of a kind such that the document is an exempt document under this clause. In such a case, sub-clause 33(3) requires the certificate to identify the relevant parts. The whole document remains an exempt document, but if a copy of the document is made omitting those parts identified by the certificate then the giving of the certificate in relation to the original document does not prevent the Administrative Appeals Tribunal's requiring an in camera inspection of the copy of the altered document to consider whether the remaining part or parts may be exempt on some other ground (sub-clause 58(4)).

97. Sub-clause 33(4) provides for the situation in which mere disclosure of whether or not a document exists would be contrary to public interest for a reason referred to in sub-clause 33(1). In that situation, the Minister may sign a certificate to that effect. The question whether there are reasonable grounds for that claim may also be referred to the Document Review Tribunal.

98. Sub-clauses 33(5) to 33(6) empower the responsible Minister of an agency to delegate to the principal officer of the agency his powers under clause 33.

Clause 34 - Cabinet documents

99. Sub-clause 34(1) provides that each of the following documents is an exempt document:

- (a) a document brought into existence for the purpose of submission to the Cabinet which has been, or is proposed by a Minister to be, submitted to Cabinet;
- (b) an official record of the Cabinet;
- (c) a copy of or an extract from a document in (a) or (b); and

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

100. Sub-clause 34(2) provides that a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is of a kind referred to in sub-clause 34(1) establishes conclusively that it is such a document. The question whether there are reasonable grounds for the claim that a document is exempt under this clause may be referred to the Document Review Tribunal (sub-clause 58(4)).

101. Sub-clause 34(3) provides that where a document is an exempt document because a particular part of the document contains matter that discloses deliberations within the Cabinet or a decision of the Cabinet the certificate given in respect of the document shall identify that part. The effect of this provision is that the document as a whole would remain an exempt document under sub-clause 34(1). If, however, it were practicable to delete in accordance with clause 22 matter identified in the certificate, access must be given to a copy of the document containing the remainder of the matter, unless that matter is itself exempt under some other provision of the Bill. The giving of a certificate in relation to the original document does not prevent the Administrative Appeals Tribunal's requiring an in camera inspection of the altered document to consider whether the remaining part or parts may be exempt on some other ground (sub-clause 64(4)).

102. Sub-clause 34(4) provides that a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document as described in the request for access would, if it existed, be a document referred to in sub-section (1) establishes conclusively that, if such a document exists, it is an exempt document.

103. Sub-clause 34(5) provides that a reference to Cabinet in this clause is to be read as including a reference to a Committee of Cabinet.

Clause 35 - Executive Council documents

104. This clause contains provisions concerning Executive Council documents analogous to the provisions of clause 34 concerning Cabinet documents. The appropriate certificate is, under sub-clause 35(2), to be given by the Secretary to the Executive Council, and where a document is exempt from mandatory access because in part it discloses deliberations within or a decision of the Executive Council, the Secretary is required under sub-clause 35(3) to identify in the certificate the part or parts of the document that disclose such deliberation or decision.

105. Sub-clauses 35(4) and 35(5) make similar provision for requests for Executive Council documents as are made for requests for Cabinet documents where it is apparent from the information supplied in the request that the document, if it existed, is exempt. If the Secretary of the Executive Council signs a certificate to this effect, a request for access may be refused on the grounds that, if such a document existed, it would be a document referred to in sub-clause 35(1) and, therefore, exempt.

Clause 36 - Internal working documents

106. Sub-clause 36(1) exempts a document from mandatory access:

- (a) if that access would involve the disclosure of matters in the nature of, or relating to, opinion, advice or recommendation or consultation or deliberation that has taken place for the purposes of the deliberative functions of an agency, a Minister or the Commonwealth Government; and

- (b) if that access would be contrary to public interest.

107. The class of documents which is so defined is intended to cover all documents that reflect the deliberative or policy-forming processes of an agency or of Government. The class of documents will include, in so far as they are concerned with the deliberative or policy-forming processes:

- . communications between Ministers;
- . communications between Ministers and their Departmental and other advisers, including the briefing of Ministers on Cabinet Submissions;
- . communications between officers of Departments, whether within the same Department or between Departments; and
- . communications between Ministers or officers and persons outside Government with respect to advice or opinions given to Ministers or officers.

The material covered by this clause also includes such documents as drafts prepared for the purpose of discussion, drafts submitted to more senior officers for settling, drafts of Cabinet Submissions, correspondence and other documents submitted to Ministers for settling and material of a similar kind. It will also include records of discussions, such as the records of discussions of inter-departmental and other committees.

108. It does not, however, cover manuals and documents which are used in a decision-making process and which are of a type referred to in clause 9 - sub-clause 36(2). Nor does it apply to a document by reason only of purely factual material contained in the document - sub-clause 36(5).

109. Sub-clause 36(3) provides that, where a Minister is satisfied that the disclosure of a document to which paragraph 36(1)(a) applies would be contrary to the public interest, he may give a certificate to that effect. That certificate establishes conclusively that the document is an exempt document so long as the certificate remains in force. The question whether there were reasonable grounds for the claim that the disclosure of such a document would be contrary to the public interest may be referred to the Document Review Tribunal (sub-clause 58(5)).

110. Sub-clause 36(4) provides that where a Minister is satisfied that the disclosure of parts only of a document to which paragraph 36(1)(a) applies would be contrary to the public interest the certificate given in respect of the document shall identify those parts. The effect of this provision is that the document as a whole would remain an exempt document under sub-clause 36(1). If, however, it were practicable to delete in accordance with clause 22 matters identified in the certificate, access must be given to a copy of the document containing the remainder of the matter, unless that matter is itself exempt under some other provision of the Bill. The giving of a certificate in relation to the original document does not prevent the Administrative Appeals Tribunal requiring an in camera inspection of the altered document to consider whether the remaining part or parts may be exempt on some other ground (sub-clause 64(4)).

111. Sub-clause 36(6) excludes from the operation of the clause reports of scientific and technical experts, reports of a prescribed body or organisation established within an agency and the records of final decisions, or the statements of reasons for those decisions, made in the exercise of a power or of an adjudicative function. Provision is made by this sub-clause for the exclusion by regulation from the clause of reports of bodies established within agencies, on the basis

that it is thought that experience may show that reports of an advisory kind from expert bodies established within departments and authorities may be excluded from the exemption notwithstanding that those reports may otherwise be within the broad category of documents defined by sub-clause 36(1).

112. That a document is an internal working document does not of itself make the document an exempt document under clause 36. To justify refusal of access to a document under this clause, the agency concerned must also form a view that it would be contrary to the public interest to give access to the document and specify the ground of public interest involved. The clause recognises that, within the wide class of documents defined in paragraph 36(1)(a), there will be many that can be made public without harm to the public interest, e.g. they may be documents of a routine or predominantly factual character, or they may contain information which has already been made public.

113. Accordingly, sub-clause 36(7) ensures that where access is refused to a document on the ground that the document is exempt under this clause, the statement of reasons provided to the applicant under clause 26 specifies the ground of public interest on which the decision to refuse is based. This is intended to require an agency refusing access on the basis of this clause to focus on the particular harm that would result from the disclosure of the document.

114. Sub-clauses 36(8) to 36(10) empower the responsible Minister of an agency to delegate to the principal officer of the agency his powers under clause 36.

Clause 37 - Documents affecting enforcement of the law and
protection of public safety

115. Sub-clause 37(1) exempts documents the disclosure of which would or could reasonably be expected to prejudice the investigation of breaches or possible breaches of the law, the evasion of taxation laws or the enforcement of the law in particular cases. It also exempts documents the disclosure of which might lead to the disclosure of confidential sources of information or the identification of informants, or endanger the lives or physical safety of law enforcement officers.

116. The cases covered by sub-clause 37(1) concern the more sensitive areas of law enforcement, in respect of which an agency should be entitled to refuse a request for access without disclosing the existence or non-existence of documents covered by the request.

117. Sub-clause 37(2) exempts documents the disclosure of which would prejudice the fair trial of a person or the impartial adjudication of a case, disclose lawful methods or procedures for preventing, detecting, investigating or dealing with breaches or evasions of the law which would thereby impair the effectiveness of those methods or prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

118. Sub-clause 37(3) makes it clear that the protection accorded by the clause extends to investigations, etc. carried on under State and Territory laws as well as Commonwealth laws.

Clause 38 - Documents to which secrecy provisions of
enactments apply

119. Clause 38 provides that a document is exempt if a secrecy provision in some other enactment covers the information contained in the document. Such a secrecy provision must be one which applies specifically to

information of the kind contained in the document. It must also be one which prohibits persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or subject to exceptions or qualifications.

Clause 39 - Documents affecting financial or property interests of the Commonwealth

120. Clause 39 provides that a document is an exempt document if the disclosure of the document under the Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

Clause 40 - Documents concerning certain operations of agencies

121. Clause 40 is intended to protect information which must remain confidential for the proper conduct of various operations of agencies. The protection extends to information relating to tests, examination or audits conducted by agencies, procedures for the supervision or review of agency operations for the purpose of ensuring the proper and efficient conduct of those operations, and personnel management and industrial relations policies of the Commonwealth or of an agency. The protection against mandatory disclosure extends only in so far as disclosure of the information concerned would prejudice an interest referred to in the clause.

Clause 41 - Documents affecting personal privacy

122. Sub-clause 41(1) exempts from mandatory access documents the disclosure of which would involve the unreasonable disclosure of information relating to the affairs of any person (including a deceased person).

123. Sub-clause 41(2) makes it clear that sub-clause 41(1) does not apply where a document contains matter relating to the personal affairs of the person making the request for access. This sub-clause is to be read subject to sub-clause 41(3).

124. Sub-clause 41(3) enables documents containing information of a medical or psychiatric nature about a person to be made available to a medical practitioner nominated by that person instead of to the person directly where the view is taken that direct access may be prejudicial to the physical or mental health or well-being of that person.

125. The Australian Law Reform Commission has had referred to it certain matters relating to privacy, including the need to balance the protection of privacy with the interests of the community in the development of knowledge and information. This clause may need to be reviewed when the Commission's report is available.

Clause 42 - Documents affecting legal proceedings or subject to legal professional privilege

126. Clause 42 exempts from mandatory access a document which would be privileged from production in legal proceedings on the ground of legal professional privilege.

127. Sub-clause 42(3) is intended to make it clear that a document referred to in sub-clause 9(1) must be made available under sub-clause 9(2) notwithstanding that it contains legal advice that would be exempt matter under this clause, but other matter exempt under this clause may be deleted from such a document.

128. This clause will prevent freedom of information legislation's being used to compel the Commonwealth to disclose its hand in pending or likely litigation or to circumvent the ordinary rules of discovery applied by the Courts.

Clause 43 - Documents relating to business affairs

129. Sub-clause 43(1) provides that a document is exempt if its disclosure would disclose trade secrets or other information having a commercial value where the commercial value of that information would be diminished or destroyed by that disclosure. The sub-clause would also make exempt a document which contains information concerning the business or professional affairs of a person or the business, commercial or financial affairs of an organisation or undertaking where the disclosure of that information would unreasonably affect adversely the person, organisation or undertaking in respect of the lawful conduct of his or its business etc. It is also a ground of exemption under the sub-clause if the disclosure of information of this kind would prejudice the future supply of information required by the Commonwealth or an agency for the purpose of administration of a law of the Commonwealth or of a Territory or other matters administered by an agency.

130. Sub-clause 43(2) makes it clear that the exemption does not apply where the access is sought by the person or organisation concerned.

131. Sub-clause 43(3) makes it clear that the protection of commercial privacy given by the clause extends to commercial undertakings carried on by the Commonwealth, a State or the Northern Territory.

Clause 44 - Documents affecting national economy

132. Sub-clause 44(1) exempts from mandatory access a document the disclosure of which would be contrary to the public interest for one or other of two reasons; first, that the disclosure would have a substantial adverse effect on the ability of the Commonwealth to manage Australia's economy and, secondly, that it could reasonably be expected that premature knowledge of any action or inaction proposed by the Government or by Parliament would unduly disturb the ordinary course of business in the community or result in an undue benefit or detriment to any person or class of persons.

133. Sub-clause 44(2) sets out examples of the kind of documents which may be covered by sub-clause 44(1).

Clause 45 - Documents containing material obtained in confidence

134. Clause 45 exempts from mandatory access a document the disclosure of which would constitute a breach of confidence.

135. This clause is intended to protect confidential relationships which would not be within the specific protection afforded by such clauses as clause 41 (personal privacy) and clause 43 (business confidences).

Clause 46 - Documents disclosure of which would be contempt of Parliament or contempt of court

136. This clause enables a document to be withheld from access where its release would otherwise be in contempt of court or contrary to the order of a Royal Commission, tribunal or similar body or would infringe the privileges of the Commonwealth or a State Parliament or the Legislative Assembly of the Northern Territory or of Norfolk Island.

Clause 47 - Certain documents arising out of companies and securities legislation

137. Sub-clause 47(1) provides that certain documents are exempt if they fall within specified categories, if they are copies of documents falling within those categories or contain an extract from such a document. The categories are:

(1) In relation to the Ministerial Council for Companies and Securities

- . documents for the purposes of the Council either prepared by a State or a State authority or received by an agency or Minister from a State or State authority;
- . documents which disclose deliberations or decisions of the Council other than a document which officially publishes a Council decision;

(2) In relation to the National Companies and Securities Commission

- . documents furnished to the Commission relating solely to the functions of the Commission in relation to the law of a State or to the laws of two or more States;
- . documents possessed by the Commission which relate solely to the exercise of the Commission's functions under the law of a State or the laws of two or more States.

138. The effect of sub-clause 47(2) is to treat the Northern Territory as a State for the purposes of the clause.

PART V - AMENDMENT OF PERSONAL RECORDS

139. The purpose of Part V is to provide a procedure by which a person may seek correction of documents held by Commonwealth Departments and authorities where those documents contain information relating to his personal affairs and he believes that information to be incomplete, incorrect, out of date or misleading.

Clause 48 - Persons may make application for amendment of record

140. This clause provides for a request to amend such a document to be made to the agency or Minister concerned. The entitlement to make a request is limited to persons who are Australian citizens or who are entitled to permanent resident status in Australia. The right to seek correction relates to documents to which access has been given under the Freedom of Information Act.

Clause 49 - Form of request for amendment of records

141. This clause specifies the requirements that must be observed in making a request for amendment of a record. The request must be made in writing, be expressed to be made in pursuance of this clause, contain an address for service in Australia and be sent by post or delivered to the address prescribed for the purposes of clause 19 in relation to the agency concerned. The request must set out the matters in respect of which the claimant believes the record to be incomplete, incorrect, out of date or misleading and must specify the amendments sought.

Clause 50 - Procedures upon request for amendment of records

142. This clause sets out the procedures to be followed where a request for amendment has been made. If the Minister or agency concerned agrees that an amendment is required, that amendment may be made either by altering the relevant documents or by adding an appropriate notation to the file. There are conflicting views on whether it is more appropriate that the amendment should be made by deleting the incorrect or out of date material and substituting the correct information, or whether the correction should be made by adding to the file, so that the file continues to show a complete historical record. This clause has been drafted so that either method may be followed.

143. It is expected that the Law Reform Commission, in its report on privacy, will deal with this matter and may opt for one form of correction or the other. It has been thought desirable not to anticipate the report of the Law Reform Commission by confining the corrections to be made under this procedure to one form or the other.

144. The clause requires the claimant to be notified of a decision on his request as soon as practicable but not later than 30 days after the request is received.

145. The provisions of clause 26 of the Bill, requiring a written statement of reasons to be given, applies to decisions made refusing to amend a record.

Clause 51 - Review of requests for amendment of records

146. The purpose of sub-clause 51(1) is to apply the provisions of the Bill relating to internal review and appeals to the Administrative Appeals Tribunal.

147. Sub-clause 51(2) provides for the case where the applicant's claim that the document in question is incomplete, incorrect, out of date or misleading is not upheld. In such a case, he is entitled to have a notation added to the file recording his claim.

148. Sub-clause 51(4) provides that, where a notation has been added to the record as a result of the request under sub-clause 51(2), any person who is given access to the relevant information is also to be told of the notation.

Clause 52 - Notation of records supplied before commencement of this Part.

149. The purpose of this clause is to make it clear that, where information was supplied to a person before the commencement of the Part, the agency or Minister concerned is entitled to notify that person of any notation which has subsequently been made on the record under paragraph 51(4)(a).

PART VI - REVIEW OF DECISIONS

Clause 53 - Interpretation

150. Clause 53 provides a rule of interpretation in respect of references in Part VI to a certificate given in respect of a document or a claim for exemption made in respect of a document under clauses 33, 34 and 35. Under those clauses a certificate may be given or a claim for exemption made on the basis of a description of a document in a request without admitting the existence or non-existence of such a document. The purpose of clause 53 is to ensure that such a certificate or claim for exemption is treated as a certificate or claim for exemption in respect of a document, notwithstanding that no such document may exist.

Clause 54 - Internal review

151. Sub-clause 54(1) provides that, where a decision is made by a person other than a Minister or principal officer of an agency in relation to a request, the applicant may apply to the principal officer for a review of the decision. The application must be made within 28 days of the date on which notice was given or within such further time as the principal officer allows. Should an extension not be granted, the applicant may have the decision to refuse an extension reviewed by the Tribunal - sub-clause 55(1).

152. Sub-clause 54(2) provides that the review is to be conducted either by the principal officer himself or by a person whom he has authorised to conduct such reviews (provided that person is not the person who made the original decision). The review makes a fresh decision on the original application.

153. The effect of sub-clause 54(3) is that a decision given on a review cannot itself be reviewed under this clause. Nor does the provision for review apply where, pursuant to clause 56, a request is deemed to have been refused because the agency did not make a decision within 60 days of receiving the request or because the Ombudsman has certified that, in his opinion, there has been unreasonable delay in answering the request.

154. Sub-clause 54(4) provides for a statement of reasons, as required by clause 26, to be given in respect of a decision on review.

Clause 55 - Applications to Administrative Appeals Tribunal

155. Sub-clause 55(1) provides for the review by the Administrative Appeals Tribunal of decisions:

- (a) refusing the grant of access to a document in accordance with a request;
- (b) relating to the liability to pay a charge;
- (c) deferring the provision of access to a document;
- or
- (d) refusing to allow a further period for making an application to review a decision.

156. Sub-clause 55(2) provides that a person who is entitled to apply under clause 44 for an internal review of a decision may not make an application to the Tribunal in respect of that decision. He may apply to the Tribunal only in respect of the decision made on the review.

157. Sub-clause 55(3) provides for the situation in which an applicant has applied for an internal review but has not been informed of the result of the review within 14 days of the date on which he made the application. An application may

then be made to the Tribunal in respect of the original decision. The Tribunal may treat such an application as having been made within the time limits stipulated in sub-clause 55(4) if the applicant does not delay unreasonably in making his application.

158. Sub-clause 55(4) stipulates the time periods within which an application may be made to the Tribunal in respect of a decision. These are:

- . 60 days from the day on which notice of a decision is given in accordance with clause 26 if notice is so given;
- . 60 days from the day on which a decision is deemed to have been made by virtue of sub-clauses 56(1) and 56(3) if no decision has been received by the applicant; or
- . where an applicant has made a complaint to the Ombudsman about a decision, 60 days from the day on which the Ombudsman informs the applicant of the result of his complaint.

The Tribunal may extend these time limits.

Clause 56 - Application to Tribunal where decision delayed

159. Sub-clause 56(1) applies when a written request for access is made, the request is expressed to be made in pursuance of the Act, it is sent by post or delivered personally to an agency or a Minister at a prescribed address and 60 days have elapsed without the applicant's having received notice of a decision on his request. In such a case the principal officer or Minister shall be deemed to have refused access to the document and the applicant may apply to the Administrative Appeals Tribunal for a review under clause 55.

160. Sub-clause 56(2) provides that where a complaint is made to the Ombudsman concerning a failure to decide on a request, whether made within the period specified in sub-clause 56(1) or not, an application may not be made to the Tribunal before the Ombudsman has notified the result of his investigation to the complainant.

161. Sub-clause 56(3) provides that if the Ombudsman, following an investigation, certifies that there has been an unreasonable delay in reaching a decision on a request, an application may be made to the Tribunal as if, on the day on which the Ombudsman gave his certificate, a decision has been made by the Minister or principal officer refusing to grant access in accordance with the request. This applies even though the period of 60 days or such other period as is applicable under clause 19 has not elapsed.

162. Sub-clause 56(4) excludes the Ombudsman from giving a certificate under sub-clause (3) that there has been unreasonable delay in dealing with a matter while that matter is awaiting decision by a Minister.

163. Sub-clause 56(5) provides that an adverse decision in respect of a request made after an application has been made to the Tribunal but before the Tribunal has finally dealt with the application may, at the request of the applicant, be reviewed as part of the proceedings before the Tribunal.

164. Sub-clause 56(6) enables the agency or Minister concerned to apply for further time to deal with a request and for the Tribunal to grant further time.

165. The clause is intended to encourage agencies to act expeditiously in meeting requests, a matter which is regarded as important for the operation of the legislation as a whole. The provisions of sub-clause 56(6) will enable the Tribunal to grant further time to an agency that has been making proper efforts to reply to a request within the 60-day period.

Clause 57 - Complaints to Ombudsman

166. Sub-clause 57(1) has the effect that the Ombudsman's powers to investigate a person's complaint about a decision will not be restricted merely because that person has a right to make an application to the Tribunal in respect of that decision.

167. Sub-clause 57(2) declares that action taken by an agency in respect of a request is action in relation to a matter of administration. The purpose of this declaratory provision is to make it clear that all the Ombudsman's existing powers extend to freedom of information requests.

168. Sub-clause 57(3) has the effect that a reference in sub-clause 57(2) to action shall be read as a reference to action as defined in the Ombudsman Act 1976, which extends the meaning of the word to include, among other things, inaction and refusal to act.

169. Sub-clause 57(4) provides that, where a person has made a complaint to the Ombudsman about a decision, that person may not make an application to the Tribunal for review of that decision before he has been informed of the result of his complaint.

170. Sub-clause 57(5) provides that any report made by the Ombudsman in respect of a complaint must not contain any information as to the existence or non-existence of a document if such information, were it included in a document of an agency, would cause that latter document to be exempt either because it affects national security, defence, international relations or relations with the States, or because it affects certain aspects of law enforcement - see sub-clause 25(1).

Clause 58 - Powers of Tribunal

171. Sub-clauses 58(1) and 58(2) provide, in effect, that the Tribunal may review any decision made in respect of a request and may decide any matter that could have been decided by an agency or Minister, but may not decide to grant access to an exempt document. That is, once it has been decided that a document is properly an exempt document, the Tribunal has no power to review a discretion to deny access to that document. The powers of the Tribunal under sub-clause 58(1) are, however, subject to certain exceptions set out in sub-clauses 58(3), 58(4) and 58(5).

172. Sub-clause 58(3) provides that the Tribunal has no power to review a decision to give a certificate under clauses 33, 34, 35 and 36.

173. Sub-clause 58(4) provides for the Administrative Appeals Tribunal to refer to the Document Review Tribunal, at the request of an applicant for access to a document, the question whether there exist reasonable grounds for a claim that a document is an exempt document under clauses 33, 34 or 35.

174. Sub-clause 58(5) deals with the case where a request has been refused on the ground that the document is exempt under clause 36 and a certificate has been given in accordance with that clause that disclosure of the document would be contrary to the public interest. Notwithstanding the certificate, the Administrative Appeals Tribunal may decide the question whether the document is a document falling within the class specified in paragraph 36(1)(a). Where the Tribunal decides that the document is such a document, the question whether there were reasonable grounds for giving the certificate is to be referred to the Document Review Tribunal if the applicant so requests.

175. Sub-clause 58(6) provides that the Tribunal may review matters relating to charges payable under the legislation in relation to a request.

Clause 59 - Review of certain decisions in respect of documents relating to business affairs etc.

176. Sub-clause 59(1) provides that a person may apply to the Tribunal for a review of a decision to give access to a document containing information concerning his business or professional affairs, or the business, commercial or financial affairs of an organisation or undertaking, if he, having made submissions to the agency concerned in accordance with clause 27, is advised by that agency that it has made a decision that the document is not exempt under clause 38 in so far as that information is concerned.

177. Sub-clause 59(2) provides that the provisions of Part VI of the Bill (other than clauses 55 and 61) apply to an application for review under this clause as they do to an application for a review of a decision refusing to grant access. Clauses 55 and 61 are applicable only to applications made by persons who are seeking access and not by persons who are seeking to limit access.

178. Sub-clause 59(2) also provides that the agency or Minister concerned must forthwith inform the person seeking access of an application to the Tribunal under this clause.

179. Sub-clause 59(3) provides that, where an application is made to the Tribunal to review a decision not to grant access to a document in respect of which submissions have been made under clause 27, the agency or Minister must notify the person who made those submissions that the application has been made.

Clause 60 - Parties

180. The purpose of this clause is to ensure that the appropriate agency or Minister is the party to a proceeding before the Tribunal, and not the individual officer who made the decision under review.

Clause 61 - Onus

181. Clause 61 places the onus of establishing that a decision given in respect of a request was justified on the agency or Minister to whom the request was made. This is because the applicant does not have access to the document concerned, and so is not necessarily in a position to argue that the decision was wrong.

Clause 62 - Application of section 28 of the Administrative Appeals Tribunal Act

182. This clause provides that section 28 of the Administrative Appeals Tribunal Act 1975 is not to apply where a notice under clauses 26 or 29 has been given. Section 28 of the Administrative Appeals Tribunal Act requires that a person who is entitled to apply to the Tribunal for a review of a decision be given a written statement of the reasons for a decision. The purpose of clause 62 is to avoid a double obligation to give reasons for a decision since clauses 26 and 29 of the Bill impose such an obligation.

Clause 63 - Tribunal to ensure non-disclosure of certain matters

183. Sub-clause 63(1) requires the Administrative Appeals Tribunal to exercise its powers under sub-section 35(2) of the Administrative Appeals Tribunal Act so as to avoid disclosing to an applicant, in proceedings under the Bill, information

which is exempt or which relates to the existence or non-existence of a document and which is protected by clause 25. The powers given to the Tribunal under sub-section 35(2) of the Administrative Appeals Tribunal Act enable the Tribunal to make orders directing that a hearing or part of a hearing take place in private and directing who may be present at such a hearing, and prohibiting or restricting the disclosure of evidence given or documents produced to the Tribunal.

184. Sub-clause 63(2) directs the Tribunal not to include any exempt matter or information protected by clause 25 in its reasons for a decision.

185. Sub-clause 63(3) further provides that the Tribunal may hear evidence or argument in the absence of the applicant or his representative if that is necessary to prevent the disclosure of exempt matter or information protected by clause 25. This provision has been included to remove any doubt about the power of the Tribunal to hear evidence or argument in the absence of the applicant.

Clause 64 - Production of exempt documents

186. Sub-clause 64(1) limits the requirement under section 37 of the Administrative Appeals Tribunal Act that documents relevant to an appeal must be lodged with the Tribunal. A document claimed to be an exempt document is not required to be produced to the Tribunal unless the Tribunal is not satisfied, by affidavit or other evidence, that the document is exempt.

187. Sub-clause 64(1) also requires that, where such a document is produced to the Tribunal and is held to be an exempt document, the document is to be returned to the person who produced it without permitting it to be disclosed to any person other than a member of the Tribunal or the staff of the Tribunal.

188. The sub-clause is subject to the provisions of sub-clause 64(3).

189. Sub-clause 64(2) provides that the Tribunal may require the production of an exempt document for the purpose of determining whether it would be practicable for a Minister or agency to grant access to a copy of the document after deleting the exempt material from the document. The sub-clause contains provisions similar to those in sub-clause 64(1) requiring the return of a document without permitting its disclosure to any person other than a member of the Tribunal or the staff of the Tribunal. This sub-clause is subject to sub-clause 64(3).

190. Sub-clause 64(3) provides that, notwithstanding the provisions of sub-clauses 54(1) and 54(2), and subject to sub-clause 64(4), the Tribunal cannot require the production of a document which is the subject of a certificate under clauses 33, 34, 35 and 36 which establishes conclusively that a document is an exempt document.

191. The sub-clause further provides that the Tribunal may not require the giving of information as to the existence or non-existence of a document in respect of which a certificate is in force under sub-clause 33(4).

192. Sub-clause 64(4) provides that where a certificate referred to in sub-clause 64(3) identifies a part or parts of a document (as provided under sub-clauses 33(3), 34(3), 35(3) and 36(4), sub-clause 64(3)) does not prevent the Administrative Appeals Tribunal from requiring the production of a copy of the document from which the identified parts have been deleted.

193. Sub-clause 64(5) applies the provisions of sub-clauses 64(1) and 64(2) to a document in the possession of a Minister which the Minister claims is not an official document of a Minister. That is, where a Minister refuses a request made to him for access to a document in his possession on the ground that it is not an official document of a Minister (see definition of "official document of a Minister" in sub-clause 4(1)) then that document must be appropriately protected in proceedings before the Tribunal. It may only be required to be produced before the Tribunal if the Tribunal is not satisfied, by other evidence, of the nature of the document.

194. Sub-clause 64(6) regulates the sending of documents produced to the Tribunal under this clause to the Federal Court of Australia in the case of an appeal or a reference of a question of law to the Court. The non-disclosure requirements are similar to those that apply in the case of the Tribunal under sub-clauses 64(1) and 64(2).

Clause 65 - Evidence of certificates

195. This clause provides that, in proceedings before the Administrative Appeals Tribunal under Part VI, evidence of a certificate under clauses 33, 34, 35 and 36 including evidence as to the identity or nature of the document concerned, may be given by affidavit or otherwise and is admissible without the production of the certificate or of the document in question. The provision would enable an officer of an agency who had knowledge of a document the subject of proceedings before the Tribunal and of a certificate to give oral evidence or evidence on affidavit to the Tribunal on those matters. Such evidence would be admissible without the need to produce the document or the certificate.

Clause

196. Admin
the D
been
relev
Docume

197. conclu
preven
questi
that a

198. conclu
Docume
there
of a
contra

Clause

199. Review
reason
docume
reason
docume
be con

Clause 66 - Referral of questions to Document Review Tribunal

196. Sub-clause 66(1) provides for the Registrar of the Administrative Appeals Tribunal to forward to the Registrar of the Document Review Tribunal such of the documents which have been lodged with the Administrative Appeals Tribunal as are relevant to the determination of a question referred to the Document Review Tribunal.

197. Sub-clause 66(2) provides that the existence of a conclusive certificate under clauses 33, 34 or 35 does not prevent the Document Review Tribunal from considering the question whether there are reasonable grounds for the claim that a document is exempt under that clause.

198. Sub-clause 66(3) provides that the existence of a conclusive certificate under clause 36 does not prevent the Document Review Tribunal from considering the question whether there are reasonable grounds for the claim that the disclosure of a document claimed to be exempt under clause 36 would be contrary to the public interest.

Clause 67 - Consideration by Document Review Tribunal of questions referred under clause 58

199. Sub-clauses 67(1) and 67(2) provide for the Document Review Tribunal to consider the questions whether there are reasonable grounds for claiming that a document is an exempt document under clauses 33, 34 or 35 and whether there are reasonable grounds for the claim that the disclosure of a document which is claimed to be exempt under clause 36 would be contrary to the public interest.

200. Sub-clause 67(3) provides that, where the Document Review Tribunal comes to the conclusion that there are no reasonable grounds for the claim for exemption, the appropriate Minister may revoke the certificate. The sub-clause provides also for the applicant for access and the Administrative Appeals Tribunal to be informed of such a revocation.

201. Sub-clause 67(4) provides that sub-clause 67(3) shall not prevent revocation of a certificate otherwise than under that sub-clause.

202. Sub-clause 67(5) has the effect that the appropriate Minister, for the purpose of considering whether a certificate should be revoked, is the Minister who gave, or whose delegate gave, the certificate or, in the case where the certificate was given by the Secretary of the Department of the Prime Minister and Cabinet (in the case of a Cabinet document) or the Secretary of the Federal Executive Council (in the case of an Executive Council document), the Prime Minister.

Clause 68 - Production of exempt documents to the Document Review Tribunal

203. This clause provides that the Document Review Tribunal is not entitled to call for the production of a document in respect of which a conclusive certificate has been given unless it is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for claiming that the document is an exempt document under clauses 33, 34 or 35 or that there are reasonable grounds for claiming that the disclosure of a document which is claimed to be exempt under clause 36 would be contrary to the public interest. The clause requires that any document so produced shall not be disclosed except to the members of the Tribunal or to the staff of the Tribunal in the course of their duties.

Clause 69 - Return of material to the Administrative Appeals Tribunal

204. This clause provides that after the Document Review Tribunal has given its decision, the Registrar of the Document Review Tribunal shall return to the Registrar of the Administrative Appeals Tribunal such documents as were forwarded by the Administrative Appeals Tribunal together with a copy of the Document Review Tribunal's decision.

PART VII - ESTABLISHMENT AND PROCEDURE OF DOCUMENT
REVIEW TRIBUNAL

Clause 70 - Interpretation

205. This clause sets out definitions of the phrase "Document Review Tribunal" and the words "member" and "President" for the purposes of Part VII.

Clause 71 - Establishment of Tribunal

206. This clause provides for the establishment of the Document Review Tribunal to consist of a President and other members appointed by the Governor-General.

Clause 72 - Qualification of Members

207. This clause provides that a person shall not be appointed a member of the Document Review Tribunal unless he is or has been a Judge of a court created by the Parliament or of the Supreme Court of a State or Territory.

Clause 73 - Term of office of members

208. This clause provides for a term of not more than 7 years, with eligibility for reappointment.

Clause 74 - Arrangement for appointment of holder of Judicial
Office of a State or of the Northern Territory

209. This clause provides for the Governor-General to make arrangements with the Governor of a State or the Administrator of the Northern Territory to secure the services of a person who is a Judge of a Supreme Court of a State or of the Northern Territory.

Clause 75 - Remuneration and allowances

210. This clause provides for a member's remuneration to be determined by the Remuneration Tribunal and for his allowances to be prescribed. A serving Judge does not receive additional payment for his services as a member - sub-clause 75(4).

Clause 76 - Appointment of Judge not to affect tenure, etc.

211. This clause provides that the appointment of a Judge of a court created by the Parliament does not affect his tenure and other rights or privileges and his service as a member shall be taken to be service as a Judge.

Clause 77 - Acting President

212. This clause provides for the Minister to appoint an Acting President in certain circumstances.

Clause 78 - Removal from office

213. This clause provides that the Governor-General may remove a member from office on an address from both Houses of the Parliament on the grounds of proved misbehaviour or incapacity.

Clause 79 - Resignation

214. This clause provides that a member may resign by writing signed by him and delivered to the Governor-General.

Clause 80 - Arrangement of business

215. This clause gives the President of the Tribunal authority to arrange the business of the Tribunal.

Clause 81 - Constitution of Tribunal for exercise of powers

216. This clause provides that the Tribunal may be constituted by one member or by three members as the President thinks appropriate, having regard to the degree of public importance and complexity of a question referred to the Tribunal.

Clause 82 - Member presiding

217. This clause provides that the President shall preside where he is a member of the Tribunal for the purposes of a proceeding or, where he is not a member, another member designated by the President shall preside.

Clause 83 - Member of Tribunal ceasing to be available

218. This clause makes provision for the completion or rehearing of proceedings when a member ceases to be available before the proceedings are determined.

Clause 84 - Places of sitting

219. This clause provides that the Tribunal shall sit from time to time as required at the places where Registries are established and may sit at any place in Australia or in an external Territory.

Clause 85 - Procedure of the Document Review Tribunal

220. This clause provides for the application and modification, if necessary, of certain provisions of the Administrative Appeals Tribunal Act 1975 relating to the procedure in the Administrative Appeals Tribunal to proceedings before the Document Review Tribunal.

Clause 86 - Application of provisions of the Administrative
Appeals Tribunal Act 1975

221. This clause applies provisions of the Administrative Appeals Tribunal Act 1975 relating to the protection of members of that Tribunal and of persons appearing before it, the obligation of witnesses, contempt of the Tribunal, the protection of confidential information, witnesses' fees, lodging of documents, and legal assistance to proceedings before the Document Review Tribunal.

Clause 87 - Application of particular provisions to proceedings
before the Document Review Tribunal

222. This clause applies to proceedings before the Document Review Tribunal clauses of the Bill relating to onus of proof, protection of confidential documents and manner of proof of certificates in proceedings before the Administrative Appeals Tribunal.

Clause 88 - Parties

223. This clause provides that the parties to a proceeding before the Document Review Tribunal are the agency or Minister concerned and the applicant.

Clause 89 - Registries

224. This clause provides for the Governor-General to establish Registries of the Document Review Tribunal and to designate one of them as the Principal Registry.

Clause 90 - Officers of Tribunal

225. This clause provides for the staff of the Tribunal, who are to be persons employed or appointed under the Public Service Act 1922.

PART VIII - MISCELLANEOUS

Clause 91 - Protection against certain actions

226. Sub-clause 91(1) gives protection against certain causes of action which might otherwise arise out of the giving of access of a document under the Bill. The protection applies where access is required to be given or where access is authorised by a person having authority to make the decision to grant access in the bona fide belief that access was required to be given. In these circumstances, no action for defamation, breach of confidence or infringement of copyright lies by reason only of the authorising or giving of access. In addition, no action for defamation or breach of confidence lies against the author of a document or any other person by reason of such a person's having supplied the document to an agency or Minister in respect of any publication involved in or resulting from the giving of access to it.

227. Sub-clause 91(2) makes it clear that the giving of access to a document does not authorise any further publication of the document by the person to whom access was given for the purposes of the law relating to defamation or breach of confidence or the doing of anything which would be a breach of copyright.

Clause 92 - Protection in respect of offences

228. This clause provides a defence in criminal proceedings for wrongful disclosure of a document or information where access to a document is required to be given under the legislation or is authorised to be given by a Minister or a person authorised to grant access in accordance with clause 23 or clause 54, in the bona fide belief that access is required to be given by the Act.

Clause 93 - Reports to Parliament

229. Sub-clause 93(1) requires an annual report on the operation of the legislation to be made by the Minister administering it and laid before each House of Parliament.

230. Sub-clauses 93(2) and 93(3) require each agency and Minister to provide certain specified information to the Minister administering the legislation for the purpose of enabling him to make the report under sub-clause 93(1).

Clause 94 - Regulations

231. Sub-clause 94(1) contains the usual regulation-making powers and, in particular, provides for the making of regulations relating to charges for access to documents and relating to the officers who may give decisions on behalf of an agency.

232. Sub-clause 94(2) sets out certain principles to be incorporated in any regulations in relation to charges.

233. Sub-clause 94(3) provides that charges imposed by the regulations apply to the giving of access to exempt documents as though that access had been required by the legislation.