



Archives Act 1983

No. 79, 1983 as amended

Compilation start date: 12 April 2013

Includes amendments up to: Act No. 13, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

The compiled Act

This is a compilation of the *Archives Act 1983* as amended and in force on 12 April 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 22 May 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act relating to the preservation and use of archival resources, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Archives Act 1983*.

2 Commencement

The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

2A Objects of this Act

The objects of this Act are:

- (a) to provide for a National Archives of Australia, whose functions include:
 - (i) identifying the archival resources of the Commonwealth; and
 - (ii) preserving and making publicly available the archival resources of the Commonwealth; and
 - (iii) overseeing Commonwealth record-keeping, by determining standards and providing advice to Commonwealth institutions; and
- (b) to impose record-keeping obligations in respect of Commonwealth records.

3 Interpretation

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

Archives means the National Archives of Australia mentioned in subsection 5(1).

authority of the Commonwealth means:

- (a) an authority, body, tribunal or organization, whether incorporated or unincorporated, established for a public purpose:

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- (i) by, or in accordance with the provisions of, an Act, regulations made under an Act or a law of a Territory other than the Northern Territory or Norfolk Island;
 - (ii) by the Governor-General; or
 - (iii) by, or with the approval of, a Minister;
 - (b) the holder of a prescribed office under the Commonwealth; or
 - (c) a Commonwealth-controlled company or a Commonwealth-controlled association;
- but does not include:
- (d) a court;
 - (e) the Australian Capital Territory;
 - (f) a body established by or under an enactment within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*;
 - (g) the Northern Territory; or
 - (h) the Administration of an external Territory.

Cabinet notebook means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet, being notes made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet.

care: a record is in the *care* of the Archives if:

- (a) the record is in the custody of the Archives; or
- (b) the record is in the custody of a person in accordance with arrangements referred to in section 64.

Census day has the meaning given by section 22B.

Census information means information transferred to the custody of the Archives under section 8A of the *Census and Statistics Act 1905*.

Chairman means the Chairman of the Council.

Commission of inquiry means:

- (a) the Commission of inquiry within the meaning of the *Quarantine Act 1908*; or

- (b) a Commission of inquiry within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Commonwealth-controlled association means an association over which the Commonwealth is in a position to exercise control, but does not include an association that is declared by the regulations not to be a Commonwealth-controlled association.

Commonwealth-controlled company means an incorporated company over which the Commonwealth is in a position to exercise control, but does not include a company that is declared by the regulations not to be a Commonwealth-controlled company.

Commonwealth institution means:

- (a) the official establishment of the Governor-General;
- (b) the Executive Council;
- (c) the Senate;
- (d) the House of Representatives;
- (e) a Department;
- (f) a Federal court or a court of a Territory other than the Northern Territory or Norfolk Island;
- (g) an authority of the Commonwealth; or
- (h) the Administration of an external Territory other than Norfolk Island.

Commonwealth record means:

- (a) a record that is the property of the Commonwealth or of a Commonwealth institution; or
- (b) a record that is to be deemed to be a Commonwealth record by virtue of a regulation under subsection (6) or by virtue of section 22;

but does not include a record that is exempt material or is a register or guide maintained in accordance with Part VIII.

Council means the National Archives of Australia Advisory Council mentioned in subsection 10(1).

current Commonwealth record means a Commonwealth record that is required to be readily available for the purposes of a Commonwealth institution, other than purposes under this Act.

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Department means:

- (a) a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth; or
- (b) a Parliamentary Department.

Deputy Chairman means the Deputy Chairman of the Council.

Director-General means the person for the time being occupying the office, or performing the duties of the office, of Director-General of the National Archives of Australia under the *Public Service Act 1999*.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

exempt material means:

- (a) material included in the memorial collection within the meaning of the *Australian War Memorial Act 1980*, other than material to which a regulation under subsection (6) applies;
- (b) material included in the collection of library material maintained by the National Library of Australia;
- (c) material included in the collection of works of art maintained by the Australian National Gallery;
- (d) material included in the historical material in the possession of the Museum of Australia; or
- (e) material included in a collection maintained by an institution declared by the regulations to be a custodial institution for the purposes of this definition;

other than material (if any) that came to be so included by reason of a contravention of section 24.

material means records and other objects.

material of the Archives means records in the care of the Archives (other than current Commonwealth records relating to the administration of the Archives).

National Witness Protection Program means the Program by that name established by the *Witness Protection Act 1994*.

object does not include a building or other structure or a vessel, aircraft or vehicle, other than a prescribed vessel, aircraft or vehicle.

open access period, in relation to a record, has the meaning given by the following provisions:

- (a) for a Cabinet notebook—section 22A;
- (b) for a record containing Census information—section 22B;
- (c) for any other record—subsection (7) of this section.

Parliamentary Department means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

person includes a Commonwealth institution or an organization.

record means a document, or an object, in any form (including any electronic form) that is, or has been, kept by reason of:

- (a) any information or matter that it contains or that can be obtained from it; or
- (b) its connection with any event, person, circumstance or thing.

Note: For the definition of **document**, see section 2B of the *Acts Interpretation Act 1901*.

responsible Minister, in relation to a Commonwealth record, means the Minister to whose ministerial responsibilities the record is most closely related.

Royal Commission means a Commissioner or Commissioners appointed by the Governor-General in the name of the Queen to make inquiry and report upon any matter.

Tribunal means the Administrative Appeals Tribunal.

- (2) For the purposes of this Act, the archival resources of the Commonwealth consist of such Commonwealth records and other material as are of national significance or public interest and relate to:
 - (a) the history or government of Australia;
 - (b) the legal basis, origin, development, organization or activities of the Commonwealth or of a Commonwealth institution;
 - (c) a person who is, or has at any time been, associated with a Commonwealth institution;
 - (d) the history or government of a Territory; or

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- (e) an international or other organization the membership of which includes, or has included, the Commonwealth or a Commonwealth institution;
- but do not include:
- (f) material that, in the opinion of the Minister, ought to be in the archives of another country or in the archives of an international organization;
 - (g) material that relates only or principally to the history or government of a State, the Northern Territory or Norfolk Island or of a Colony that became part of the Commonwealth, not being:
 - (i) Commonwealth records;
 - (ii) property referred to in section 85 of the Constitution; or
 - (iii) material transferred to the Commonwealth by a State, the Northern Territory or Norfolk Island under a law or agreement;
 - (h) material, other than Commonwealth records, relating only to a place that has been, but has ceased to be, a Territory; or
 - (j) exempt material.
- (3) For the purposes of this Act, the Department of Defence shall be deemed to include:
- (a) the Defence Force;
 - (b) the Australian Army Cadets;
 - (c) the Australian Navy Cadets; and
 - (d) the Australian Air Force Cadets.
- (3A) In this Act, a reference to the provision of a discretionary service for a person is a reference to the doing of an act by the Archives, being an act that the Archives has power to do and that it does at the person's request, other than an act that:
- (a) this Act requires the Archives to do; or
 - (b) it is necessary for the Archives to do for the proper performance of its functions.
- (4) For the purposes of this Act, the Australian Federal Police shall be deemed to be an authority of the Commonwealth.
- (5) For the purposes of this Act, a record held by or on behalf of the Parliament or a House of the Parliament shall be taken to be the property of the Commonwealth.
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- (6) The regulations may make provision under which, in specified cases or circumstances, records of which the Commonwealth or a Commonwealth institution has, or is entitled to have, possession are to be deemed to be Commonwealth records for the purposes of the provisions, or specified provisions, of this Act.
- (7) For the purposes of this Act, subject to sections 22A and 22B, work out when a record is in the *open access period* in accordance with the following table:

Open access period for records		
Item	If the record came into existence in any of the following years (ending on 31 December):	the record is in the open access period on and after the following day:
1	a year (the <i>creation year</i>) before 1980	1 January in the year that is 31 years after the creation year. Example: A record that came into existence in the year 1979 is in the open access period on and after 1 January 2010.
2	1980 or 1981	1 January 2011.
3	1982 or 1983	1 January 2012.
4	1984 or 1985	1 January 2013.
5	1986 or 1987	1 January 2014.
6	1988 or 1989	1 January 2015.
7	1990 or 1991	1 January 2016.
8	1992 or 1993	1 January 2017.
9	1994 or 1995	1 January 2018.
10	1996 or 1997	1 January 2019.
11	1998 or 1999	1 January 2020.
12	2000	1 January 2021.
13	a year (the <i>creation year</i>) after 2000	1 January in the year that is 21 years after the creation year. Example: A record that came into existence in the year 2001 is in the open access period on and after 1 January 2022.

Note: Cabinet notebooks and records containing Census information have different open access periods (see sections 22A and 22B).

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(8) Nothing in this Act shall be taken to confer power on the Archives to affect the custody of:

- (a) material, being Commonwealth records, that was held at the commencement of Part II by a State, the Northern Territory or Norfolk Island or by an authority of a State, of the Northern Territory or of Norfolk Island and has continued since that time to be so held by that State, that Territory or that authority; or
- (b) material, other than Commonwealth records, that is held at any time by a State or by a Territory or authority referred to in paragraph (a);

except with the consent of the State, Territory or authority by which the material is held.

3A A company no longer established for a public purpose

An authority, body, tribunal or organisation, whether incorporated or unincorporated, established for a public purpose is to be taken, for the purposes of this Act, never to have been so established, only if:

- (a) a legislative provision; or
- (b) regulations made for the purpose of this section;

expressly provide that, for the purposes of this Act, the authority, body, tribunal or organisation is to be taken never to have been so established.

3B Commonwealth-controlled companies or associations that are not authorities of the Commonwealth

If a company or association was, immediately before the commencement of this section:

- (a) a Commonwealth-controlled company or a Commonwealth-controlled association that was:
 - (i) not established for a public purpose; and
 - (ii) not prescribed under paragraph (c) of the definition of *authority of the Commonwealth* as then in force; or
- (b) a Commonwealth-controlled company or a Commonwealth-controlled association that was:
 - (i) established for a public purpose; but

(ii) taken, under a provision of an Act, never to have been so established;
then, despite paragraph (c) of the definition of *authority of the Commonwealth*, the company or association is to be taken not to be an authority of the Commonwealth.

3C Director-General may determine archival resources of the Commonwealth

- (1) The Director-General may, in writing, determine that a specified Commonwealth record or other material is part of the archival resources of the Commonwealth.

Note: The Director-General may specify a record by reference to a class of records (see subsection 33(3AB) of the *Acts Interpretation Act 1901*).

- (2) The Director-General must not make a determination under this section unless he or she is satisfied that the specified Commonwealth record or other material is part of the archival resources of the Commonwealth (within the meaning of subsection 3(2)).
- (3) A determination under this section may be set out in the same document as a permission or approval given under paragraph 24(2)(b) or a notice of disapproval given under paragraph 24(2)(c).
- (4) A determination under this section is not a legislative instrument.

4 Extension to Territories

This Act extends to every external Territory.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Part II—Establishment, functions and powers of the National Archives of Australia

5 Establishment and functions of National Archives of Australia

- (1) There shall be an organization by the name of the National Archives of Australia.
- (2) The functions of the National Archives of Australia are, subject to this Act:
 - (a) to ensure the conservation and preservation of the existing and future archival resources of the Commonwealth; and
 - (b) to encourage and foster the preservation of all other archival resources relating to Australia; and
 - (c) to promote, by providing advice and other assistance to Commonwealth institutions, the creation, keeping and management of current Commonwealth records in an efficient and economical manner and in a manner that will facilitate their use as part of the archival resources of the Commonwealth; and
 - (d) to determine the material that constitutes the archival resources of the Commonwealth; and
 - (e) to have the care and management of Commonwealth records, other than current Commonwealth records, that:
 - (i) are part of the archival resources of the Commonwealth; or
 - (ii) ought to be examined to determine whether they are part of those archival resources; or
 - (iii) are required to be preserved (other than permanently preserved); and
 - (f) to seek to obtain, and to have the care and management of, material (including Commonwealth records) not in the custody of a Commonwealth institution, that forms part of the archival resources of the Commonwealth and, in the opinion of the Director-General, ought to be in the care of the Archives; and
 - (g) with the approval of the Minister, to accept and have the care and management of material that, though not part of the

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- archival resources of the Commonwealth, forms part of archival resources relating to Australia and, in the opinion of the Minister, ought to be in the care of the Archives in order to ensure its preservation or for any other reason; and
- (h) to encourage, facilitate, publicise and sponsor the use of archival material; and
 - (j) to make Commonwealth records available for public access in accordance with this Act and to take part in arrangements for other access to Commonwealth records; and
 - (k) to conduct research, and provide advice, in relation to the management and preservation of records and other archival material; and
 - (l) to develop and foster the co-ordination of activities relating to the preservation and use of the archival resources of the Commonwealth and other archival resources relating to Australia; and
 - (m) with the approval of the Minister, and in accordance with arrangements made with a person responsible for exempt material, to perform any of the foregoing functions in relation to that material as if that material formed part of the archival resources of the Commonwealth.
- (3) Nothing in this Part derogates from the powers and functions of any other Commonwealth institution in relation to the keeping of current Commonwealth records.

6 Powers of Archives

- (1) The Archives may do all things that are necessary or convenient to be done for or in connection with the performance of its functions and, in particular, without limiting the generality of the foregoing, may:
 - (a) establish and control repositories or other facilities to house or exhibit material of the Archives and, in association with a State, the Australian Capital Territory, the Northern Territory or other person, control repositories or other facilities in which material of the Archives is housed or exhibited;
 - (b) undertake the survey, appraisal, accessioning, arrangement, description and indexing of Commonwealth records;
 - (c) make arrangements for the acquisition by the Commonwealth of, or of copyright in relation to, or arrangements relating to

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- the custody of, material that forms part of the archival resources of the Commonwealth;
- (d) chronicle and record matters relating to the structure and functioning of Commonwealth institutions or other matters of archival significance and make records for the purpose of adding to the archival resources of the Commonwealth;
 - (e) make copies, by microfilming or otherwise, of archival material, but not so as to infringe copyright (other than copyright owned by the Commonwealth) subsisting in the material;
 - (f) arrange for the publication of material forming part of the archival resources of the Commonwealth or works based on such material, but not so as to infringe copyright (other than copyright owned by the Commonwealth) subsisting in the material or works;
 - (g) publish indexes of, and other guides to, archival material;
 - (h) authorize the disposal or destruction of Commonwealth records;
 - (j) on request, assist Commonwealth institutions in the training of persons responsible for the keeping of current Commonwealth records;
 - (k) train, or assist in the training of, persons, other than persons responsible for the keeping of current Commonwealth records, for work in connection with records and other archival material;
 - (l) obtain and maintain equipment for use in retrieving, or otherwise obtaining, information from records; and
 - (m) provide information and facilities for persons using the material of the Archives.
- (2) Where, in the performance of its functions, the Archives enters into arrangements to accept the care of records from a person other than a Commonwealth institution, those arrangements may provide for the extent (if any) to which the Archives or other persons are to have access to those records and any such arrangements have effect notwithstanding anything contained in Division 3 of Part V.
- (3) Where an arrangement entered into by the Archives to accept the care of records from a person other than a Commonwealth institution relates to a Commonwealth record, then, to the extent

that that arrangement, in so far as it relates to such a record, is inconsistent with a provision of Part V, that provision shall prevail.

6A Records that are not part of the archival resources of the Commonwealth

- (1) Nothing in this Act requires the Archives to accept the care of a Commonwealth record that has not been determined to be part of the archival resources of the Commonwealth under section 3C.
- (2) If:
 - (a) a Commonwealth institution has transferred a Commonwealth record to the care of the Archives; and
 - (b) the record has not been determined to be part of the archival resources of the Commonwealth under section 3C;the Archives may:
 - (c) if another Commonwealth institution has succeeded to the relevant functions of the institution—cause the record to be transferred to the custody of that successor institution, but only in accordance with arrangements agreed to by that successor institution; or
 - (d) otherwise—cause the record to be transferred to the custody of the institution, but only in accordance with arrangements agreed to by the institution.

Part III—The Director-General and staff of the Archives

7 Director-General

- (1) There shall be a Director-General of the National Archives of Australia, who shall be a person appointed or engaged under the *Public Service Act 1999*.
- (2) The Director-General, in addition to exercising powers or performing duties expressly conferred or imposed on him or her by this Act, may, in the name of the Archives, exercise any powers and perform any duties that are by this Act expressed to be conferred or imposed on the Archives.
- (3) The Minister may give directions, not inconsistent with this Act, to the Director-General in relation to the exercise of his or her powers, and the performance of his or her duties, under this Act.

8 Delegation by Director-General

- (1) The Director-General may, either generally or as otherwise provided by the instrument of delegation, by writing under his or her hand, delegate to a person all or any of his or her powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Director-General.
- (3) A delegation under this section does not prevent the exercise of a power by the Director-General.

9 Staff

The staff of the Archives shall be persons engaged under the *Public Service Act 1999*.

Part IV—National Archives of Australia Advisory Council

10 National Archives of Australia Advisory Council

- (1) There is established by this Act a Council by the name of the National Archives of Australia Advisory Council.
- (2) The Council shall consist of:
 - (a) a Senator chosen by the Senate;
 - (b) a member of the House of Representatives chosen by that House; and
 - (c) 11 other members, appointed by the Minister.
- (3) A member chosen by either House of the Parliament holds office, subject to this Act, for such period, not exceeding 3 years, as is fixed by that House at the time of his or her choice.
- (4) A member appointed by the Minister holds office, subject to this Act, for such period, not exceeding 3 years, as the Minister specifies in the instrument of his or her appointment.
- (5) A member chosen by either House of the Parliament or appointed by the Minister is eligible for further choice or re-appointment.
- (6) The performance of the functions of the Council is not affected by reason of there being a vacancy or vacancies in the membership of the Council.

11 Functions of Council

- (1) The Council shall furnish advice to the Minister and the Director-General with respect to matters to which the functions of the Archives relate.
- (2) The Minister or the Director-General may refer any matter of the kind referred to in subsection (1) to the Council for advice and the Council may, if it thinks fit, consider and advise the Minister or the Director-General on a matter of that kind of its own motion.

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12 Chairman and Deputy Chairman of Council

The Minister shall appoint a member to be Chairman of the Council and another member to be Deputy Chairman of the Council.

13 Deputies of members

- (1) A member chosen by the Senate or by the House of Representatives may appoint a Senator or a member of the House of Representatives, as the case may be, to be his or her deputy.
- (2) The Minister may appoint a person to be a deputy of a member referred to in paragraph 10(2)(c).
- (3) The deputy of a member is, in the event of the absence of the member from a meeting of the Council, entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Council.

14 Remuneration and allowances of members

- (1) A member referred to in paragraph 10(2)(c), or the deputy of such a member, shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) A member referred to in paragraph 10(2)(c), or the deputy of such a member, shall be paid such allowances as are prescribed.
- (3) A member referred to in paragraph 10(2)(a) or (b), or the deputy of such a member, shall be reimbursed such expenses as he or she reasonably incurs by reason of his or her attendance at meetings of the Council or of his or her engagement, with the approval of the Council, on the affairs of the Council.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

15 Termination of office of member

- (1) The Minister may terminate the appointment of a member, being a member appointed by the Minister, by reason of misbehaviour or physical or mental incapacity.
- (2) If a member appointed by the Minister is absent, except on leave granted by the Council, from 3 consecutive meetings of the Council, the Minister may terminate the appointment of the member.
- (3) A member chosen by either House of the Parliament may be removed from office by that House.
- (4) If a member chosen by either House of the Parliament or a deputy of such a member ceases to be a member of that House, he or she shall cease to be a member of the Council or a deputy of such a member.
- (5) For the purposes of subsection (4), a member of either House of the Parliament shall be deemed not to have ceased to be a member of that House while he or she continues to be entitled to the Parliamentary allowances that became payable to him or her as such a member.

16 Resignation of member

- (1) A member appointed by the Minister may resign his or her office by writing signed by him or her and delivered to the Minister.
- (2) A member chosen by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (3) A member chosen by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of the House of Representatives.

17 Meetings of the Council

- (1) The Council shall hold such meetings as are necessary for the performance of its functions.
- (2) The Chairman may at any time convene a meeting of the Council.

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- (3) The Chairman shall, on receipt of a request in writing signed by 2 other members of the Council, convene a meeting of the Council.
- (4) At a meeting of the Council a majority of the members of the Council constitute a quorum.
- (5) The Director-General is entitled to receive notice of meetings of the Council, and the Director-General, or a member of the staff of the Archives nominated by him or her, may attend any meeting of the Council and take such part in the proceedings, not including voting, as the Council approves.
- (6) The Chairman shall preside at all meetings of the Council at which he or she is present.
- (7) If, at a meeting of the Council, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.
- (8) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Council, the members present shall elect one of their number to preside at the meeting.
- (9) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.
- (10) The member presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (11) In subsections (2) and (3), a reference to the Chairman shall, if there is no Chairman or the Chairman is absent from Australia or unable to perform the duties of his or her office, be read as a reference to the Deputy Chairman.

Part V—Commonwealth records

Division 1—Preliminary

18 Records of the Parliament

Subject to sections 20 and 21, Divisions 2 and 3 do not apply to records in the possession of the Senate, the House of Representatives or a Parliamentary Department.

19 Court records

- (1) Subject to sections 20 and 21, Divisions 2 and 3 do not apply to records in the possession of a court or of a registry of a court.
- (2) Divisions 4 and 5 do not apply to records in the possession of a court or of a registry of a court, other than records that are of an administrative nature.

20 Regulations and arrangements relating to certain records

- (1) Subject to this section, the regulations may provide that all or any of the provisions of Divisions 2 and 3 are, in such circumstances and subject to such conditions as are prescribed, to apply to all or any of the records referred to in section 18 or subsection 19(1), and may provide that those provisions are so to apply subject to such modifications as are prescribed.
- (2) Regulations shall not be made for the purposes of subsection (1) in relation to the application of the provisions of Divisions 2 and 3 to records in the possession of the Senate, the House of Representatives or a Parliamentary Department, unless there has been consultation between the Minister and:
 - (a) in the case of records in the possession of the Senate or of the Department of the Senate—the President of the Senate;
 - (b) in the case of records in the possession of the House of Representatives or of the Department of the House of Representatives—the Speaker of the House of Representatives; or
 - (c) in the case of records in the possession of a Parliamentary Department other than the Department of the Senate or the

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Department of the House of Representatives—both the President of the Senate and the Speaker of the House of Representatives;

concerning the application of those provisions to those records.

- (3) Regulations shall not be made for the purposes of subsection (1) in relation to the application of the provisions of Divisions 2 and 3 to records in the possession of a court or of a registry of a court unless there has been consultation between the Minister and the Chief Justice or Chief Judge of that court, or, if there is no Chief Justice or Chief Judge, the judicial officer of that court whom the Minister is satisfied has, from time to time, the principal responsibility for the administration of the business of that court, concerning the application of those provisions to those records.

21 Archives may be given custody of certain records

- (1) Subject to any regulations made in accordance with section 20, a person having the control of the custody of any records referred to in section 18 or subsection 19(1) may enter into arrangements with the Archives with respect to the custody of those records.
- (2) Arrangements referred to in subsection (1) relating to the custody of records may provide for the extent (if any) to which the Archives or other persons are to have access to those records.

22 Records of Royal Commissions etc.

- (1) This section applies to:
 - (a) the records kept by a Royal Commission, whether the inquiry commenced or was completed before or after the commencement of this Part; and
 - (b) the records kept by a Commission of inquiry.
- (2) The Commonwealth is entitled to the possession of records kept by a Royal Commission, or by a Commission of inquiry, that are no longer required for the purposes of the Commission, and all such records shall be deemed to be Commonwealth records for the purposes of this Act.
- (3) Records referred to in subsection (2) shall be kept in such custody as the responsible Minister directs and the Archives is not entitled

to the care of any such records except in accordance with such a direction.

- (4) A direction given by a Royal Commission, or by a Commission of inquiry, prohibiting the publication of any document or matter does not apply to the provision of public access under this Act to any records that are in the open access period or to the publication by any person of any records that are available for public access in accordance with this Act.
- (5) For the purposes of this Act:
 - (a) the Minister administering the *Royal Commissions Act 1902* is taken to be the responsible Minister in relation to the records of a Royal Commission; and
 - (b) the Minister administering the *Quarantine Act 1908* is taken to be the responsible Minister in relation to the records of the Commission of inquiry within the meaning of that Act; and
 - (c) the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* is taken to be the responsible Minister in relation to the records of a Commission of inquiry within the meaning of that Act.
- (6) Where a Royal Commission has conducted an inquiry by virtue of a commission issued by the Governor of a State in conjunction with its inquiry under a commission issued by the Governor-General, subsections (2) and (3) apply only to such of the records of the Royal Commission as are determined by agreement between the Commonwealth and the State.

22A Cabinet notebooks

- (1) For the purposes of this Act, work out when a Cabinet notebook is in the *open access period* in accordance with the following table:

Section 22B

Open access period for Cabinet notebooks

Item	If the Cabinet notebook came into existence in any of the following years (ending on 31 December):	the Cabinet notebook is in the open access period on and after the following day:
1	a year (the <i>creation year</i>) before 1960	1 January in the year that is 51 years after the creation year. Example: A Cabinet notebook that came into existence in the year 1959 is in the open access period on and after 1 January 2010.
2	1960, 1961 or 1962	1 January 2011.
3	1963, 1964 or 1965	1 January 2012.
4	1966, 1967 or 1968	1 January 2013.
5	1969, 1970 or 1971	1 January 2014.
6	1972, 1973 or 1974	1 January 2015.
7	1975, 1976 or 1977	1 January 2016.
8	1978, 1979 or 1980	1 January 2017.
9	1981, 1982 or 1983	1 January 2018.
10	1984, 1985 or 1986	1 January 2019.
11	1987, 1988 or 1989	1 January 2020.
12	1990	1 January 2021.
13	a year (the <i>creation year</i>) after 1990	1 January in the year that is 31 years after the creation year. Example: A Cabinet notebook that came into existence in the year 1991 is in the open access period on and after 1 January 2022.

Note: Records that are not Cabinet notebooks have different open access periods (see subsection 3(7) (general records) and section 22B (records containing Census information)).

(2) Subsection 3(7) does not apply in relation to Cabinet notebooks.

22B Census information

(1) For the purposes of this Act, a record containing Census information from a particular Census is in the open access period for that Census if a period of 99 years has elapsed since the Census day for that Census.

(2) Subsection 3(7) and section 56 do not apply to records containing Census information.

(3) In this Act:

Census day, for a Census, means the day appointed, under subsection 8(2) of the *Census and Statistics Act 1905*, as the Census day for that Census.

23 Records of inter-governmental authorities

The regulations may provide for restricting or excluding the operation of all or any of the provisions of this Act in relation to all or any records of or relating to an authority or body established:

- (a) for the performance of functions under the law of the Commonwealth and the law of any State or States, the Australian Capital Territory, the Northern Territory, Norfolk Island or another country; or
 - (b) for the purpose of an agreement between the Commonwealth and any State or States, the Australian Capital Territory, the Northern Territory, Norfolk Island or another country;
- or to the operations of an authority or body so established.

Division 2—Dealings with Commonwealth records

24 Disposal, destruction etc. of Commonwealth records

- (1) Subject to this Part, a person must not engage in conduct that results in:
- (a) the destruction or other disposal of a Commonwealth record; or
 - (b) the transfer of the custody or ownership of a Commonwealth record; or
 - (c) damage to or alteration of a Commonwealth record.

Penalty: 20 penalty units.

- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that the record is a Commonwealth record.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subsection (1) does not apply to anything done:
- (a) as required by any law;
 - (b) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives;
 - (c) in accordance with a normal administrative practice, other than a practice of a Department or authority of the Commonwealth of which the Archives has notified the Department or authority that it disapproves; or
 - (d) for the purpose of placing Commonwealth records that are not in the custody of the Commonwealth or of a Commonwealth institution in the custody of the Commonwealth or of a Commonwealth institution that is entitled to custody of the records.
- (3) Subsection (1) does not apply to the destruction of a Commonwealth record, being a record to which subsection 47(1), 70(1) or 107(1) of the *Copyright Act 1968* applies, where the Director-General has declined to consent to the delivery of the record to the Archives.
- (4) This section does not authorize the Archives to permit the destruction or other disposal of a Commonwealth record that is in

the possession of, or has been transferred to the care of the Archives by, a Commonwealth institution, without the consent of that institution or of a Commonwealth institution that has succeeded to the relevant functions of that institution.

- (5) For the purposes of the application of subsection (1) to a record of a kind used by means of any mechanical or electronic device or equipment, including a computer, any treatment or modification of the record that would prevent the obtaining from the record of information or matter that could previously have been obtained from the record shall be deemed to be destruction of the record.

25 Advice to Council on disposal practices

- (1) The Archives shall:
- (a) as soon as practicable after the commencement of this Part, furnish to the Council a statement in writing setting out particulars of the practices followed by, or approved by, the Archives in respect of the destruction or other disposal of Commonwealth records whether or not those practices have been agreed upon between the Archives and any particular Commonwealth institution;
 - (b) in a case where, after the commencement of this Part, the Archives alters, or approves any alteration of, any practice of a kind referred to in paragraph (a), not being a practice agreed upon between the Archives and a Commonwealth institution—furnish to the Council a statement setting out particulars of the alteration to that practice as soon as practicable after the Archives has decided to alter, or to approve the alteration of, that practice and, where possible, before the implementation of the practice as so altered; and
 - (c) in a case where practices for the destruction or other disposal of Commonwealth records are agreed upon at any time after the commencement of this Part between the Archives and a Commonwealth institution—furnish to the Council a statement setting out particulars of those practices as soon as practicable after those practices have been agreed upon and, where possible, before the implementation of those practices.
- (2) A reference in subsection (1) to practices agreed upon between the Archives and a Commonwealth institution includes a reference to practices so agreed upon that vary practices that have, whether

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before or after the commencement of this Part, been previously agreed upon between the Archives and that institution.

26 Alteration of Commonwealth records

- (1) A person is guilty of an offence if:
 - (a) a Commonwealth record has been in existence for more than 15 years; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct results in an addition to or an alteration of the record.

Penalty: 20 penalty units.

- (1A) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subsection (1) does not apply to anything done:
 - (a) as required by any law; or
 - (b) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives.

27 Transfer of certain Commonwealth records to care of Archives

- (1) This section applies to a Commonwealth record that:
 - (a) is in the custody of a Commonwealth institution other than the Archives; and
 - (b) has been determined to be part of the archival resources of the Commonwealth under section 3C.

Note: In certain circumstances a Commonwealth institution or Minister can exempt a record from this section (see section 29).

- (2) The person responsible for the custody of the record must cause the record to be transferred to the care of the Archives in accordance with arrangements approved by the Archives.
- (3) The record must be transferred:
 - (a) if the record ceases to be a current Commonwealth record—as soon as practicable after the record ceases to be a current Commonwealth record; and
 - (b) in any event—within 15 years of the record coming into existence.

28 Archives to have access to records

Subject to this Part, the Archives is entitled, for the purposes of this Act, to full and free access, at all reasonable times, to all Commonwealth records in the custody of a Commonwealth institution other than the Archives.

Note: In certain circumstances a Commonwealth institution or Minister can exempt a record from this section (see section 29).

28A Records of companies or associations that cease to be authorities of the Commonwealth

If a company or association that is an authority of the Commonwealth ceases, on a particular day, to be such an authority of the Commonwealth, then, despite the company or association so ceasing:

- (a) the records of the company or association that were in existence prior to that day continue to be Commonwealth records; and
- (b) the Archives may make arrangements with the company or association to enable those records of the company or association to be dealt with in accordance with the provisions of this Part in the same manner as if the company or association had not ceased to be an authority of the Commonwealth.

29 Exemption of certain records

- (1) A Commonwealth institution, or a person having authority to act on behalf of a Commonwealth institution, may, with the concurrence of the Director-General, determine that a Commonwealth record, or each record in a class of Commonwealth records, being a record or class of records in the possession of the Commonwealth institution or relating to the functions of the Commonwealth institution, is:
 - (a) a record that is not required to be transferred to the care of the Archives under section 27; or

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(b) a record to which the Archives is not to be entitled to have access under section 28 or is not to be entitled to have access under that section otherwise than on specified conditions to be observed by the Archives;

and such a determination has effect for such period as is specified in the determination but may at any time be revoked by the Commonwealth institution or a person having authority to act on behalf of the Commonwealth institution.

(2) Notwithstanding subsection (1), the responsible Minister may determine that a Commonwealth record, or each record in a class of Commonwealth records, is:

(a) a record that is not required to be transferred to the care of the Archives under section 27; or

(b) a record to which the Archives is not to be entitled to have access under section 28 or is not to be entitled to have access under that section otherwise than on specified conditions to be observed by the Archives;

and such a determination takes effect upon its being notified to the Archives and has effect for such period as is specified in the determination but may at any time be revoked by the responsible Minister.

(3) The Archives may agree with a Commonwealth institution that records accepted into the care of the Archives from that institution are to be held on certain conditions to be observed by the Archives, not being conditions inconsistent with this Part.

Note: Arrangements under section 64 for a person (other than the Archives) to have custody of a Commonwealth record must enable the Archives to meet its obligations under this subsection.

(4) Where:

(a) the Archives seeks access to a Commonwealth record that is not in the care of the Archives; and

(b) a person responsible for the custody of the record considers that it might be appropriate for a determination to be made under subsection (2) applying paragraph (2)(b) to the record;

the person so responsible may forthwith notify the Archives that he or she so considers and take appropriate action for enabling consideration to be given by the responsible Minister to the making of such a determination.

- (5) Where a notification under subsection (4) has been given in respect of a record, the Archives is not entitled to access to the record for a period of one month from the date on which the notification was given, but, if the notification is withdrawn by the person responsible for the custody of the record before the expiration of that period, this subsection ceases to have effect in relation to the record.
- (6) A record that is in the open access period is not, by virtue of a determination under subsection (1), a record to which paragraph (1)(b) applies unless:
- (a) the record is an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b); and
 - (b) a security classification applies to the record such that access by the Archives would not be appropriate.
- (7) A record that is in the open access period is not, by virtue of a determination under subsection (2), a record to which paragraph (2)(b) applies unless:
- (a) the record is an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b); and
 - (b) a security classification applies to the record such that access by the Archives would not be appropriate.
- (8) The concurrence of the Director-General is not required for the making of a determination under subsection (1) by, or by a person having authority to act on behalf of, any of the following Commonwealth institutions, namely:
- (a) the Australian Security Intelligence Organisation;
 - (b) the Australian Secret Intelligence Service;
 - (ba) the Defence Imagery and Geospatial Organisation;
 - (c) the Defence Signals Directorate;
 - (d) the Defence Intelligence Organisation;
 - (e) the Office of National Assessments; and
 - (f) the Inspector-General of Intelligence and Security.
- (9) The concurrence of the Director-General is not required for the making of a determination under subsection (1) by the Commissioner of the Australian Federal Police in relation to any

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record that contains information the release of which would endanger the safety of a person:

- (a) who is, or has been, assessed for inclusion in the National Witness Protection Program; or
- (b) who is, or has been, a witness within the meaning of the *Witness Protection Act 1994* under that Program.

30 Commonwealth records to be available to Commonwealth institutions

- (1) The Archives must ensure that all Commonwealth records transferred to its care from a Commonwealth institution are made available, as reasonably required, for use by, or at the direction of:
 - (a) that institution; or
 - (b) a Commonwealth institution that has succeeded to the relevant functions of that institution.

Note: Arrangements under section 64 for a person (other than the Archives) to have custody of a Commonwealth record must enable the Archives to meet its obligations under this subsection.

- (2) A record that has been in existence for more than 15 years must not be made available to a Commonwealth institution under subsection (1) in a manner that involves its leaving the custody of the person who has the custody of the record, except as necessary for the proper conduct of the business of the Commonwealth institution.

30A Non-disclosure of Census information

Non-disclosure to another person

- (1) An Archives officer must not, at any time before a record containing Census information from a Census is in the open access period for that Census, divulge or communicate any of that information to another person (except to another Archives officer for the purposes of, or in connection with, the performance of that other officer's duties under this Act).

Note: Section 70 of the *Crimes Act 1914* creates an offence in relation to the disclosure of information by Commonwealth officers.

Non-disclosure to a court or tribunal

- (2) A person who is or has been an Archives officer must not, at any time before a record containing Census information from a Census is in the open access period for that Census:
- (a) be required to divulge or communicate any of that information to a court or tribunal; or
 - (b) voluntarily give any of that information in evidence in proceedings before a court or tribunal.

Section 58 has no effect on this section

- (3) Section 58 does not affect the operation of this section.

Definition

- (4) In this section:

Archives officer means the Director-General or a member of the staff of the Archives.

Division 3—Access to Commonwealth records

31 Records in open access period to be publicly available

- (1A) This section applies to a Commonwealth record that:
- (a) is in the open access period; and
 - (b) is in the care of the Archives or in the custody of a Commonwealth institution; and
 - (c) is not an exempt record.

- (1) Subject to this Part, the Archives must cause the record to be made available for public access.

Note: Arrangements under section 64 for a person (other than the Archives) to have custody of a Commonwealth record must enable the Archives to meet its obligations under this subsection.

- (2) If the record is in the custody of a Commonwealth institution, the institution must make such arrangements with the Archives as will enable the Archives to meet its obligations under subsection (1) in relation to the record.

Note: If the record is material of the Archives, the arrangements referred to in subsection (2) must be included in the arrangements under section 64 for the Commonwealth institution to have custody of the record.

- (3) Subject to any regulations made under section 20, subsection (2) does not apply to:
- (a) the Senate, the House of Representatives or a Parliamentary Department, in relation to records in the possession of the Senate, the House of Representatives or the Parliamentary Department; or
 - (b) a court, in relation to records in the possession of that court or of a registry of that court.
- (4) The Archives may withhold a Commonwealth record or a class of Commonwealth records from public access for a reasonable time pending examination in accordance with section 35.

32 Consultation with States

- (1) Where it appears to the Minister that the Government of a State, of the Australian Capital Territory or of the Northern Territory, as the
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case may be, might reasonably wish to contend that the making available of a record under section 31 could adversely affect the interests of that State, of the Australian Capital Territory or of the Northern Territory, as the case may be, the record shall not be made available unless there has been consultation between the Commonwealth and that State, the Australian Capital Territory or the Northern Territory.

- (2) For the purpose of facilitating consultation under subsection (1), the Commonwealth may enter into such arrangements with a State, with the Australian Capital Territory or with the Northern Territory as it thinks appropriate.

33 Exempt records

- (1) For the purposes of this Act, a Commonwealth record is an exempt record if it contains information or matter of any of the following kinds:
- (a) information or matter the disclosure of which under this Act could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth;
 - (b) information or matter:
 - (i) that was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the *foreign entity*) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the *Commonwealth entity*); and
 - (ii) which the foreign entity advises the Commonwealth entity is still confidential; and
 - (iii) the confidentiality of which it would be reasonable to maintain;

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- (c) information or matter the disclosure of which under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of a Commonwealth institution and would not, on balance, be in the public interest;
- (d) information or matter the disclosure of which under this Act would constitute a breach of confidence;
- (e) information or matter the disclosure of which under this Act would, or could reasonably be expected to:
 - (i) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (ii) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
 - (iii) endanger the life or physical safety of any person;
- (f) information or matter the disclosure of which under this Act would, or could reasonably be expected to:
 - (i) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (ii) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (iii) prejudice the maintenance or enforcement of lawful methods for the protection of public safety;
- (g) information or matter the disclosure of which under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person);
- (h) information or matter relating to trade secrets, or any other information or matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information or matter were disclosed;

- (j) information or matter (other than information or matter referred to in paragraph (h)) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information or matter the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs.
- (1A) For the purposes of subparagraph (1)(e)(ii), a confidential source of information in relation to the enforcement or administration of the law includes:
- (a) a person who is providing, or has provided, confidential information to the Australian Crime Commission in relation to such a matter; or
 - (b) a person who is providing, or has provided, confidential information to the Australian Federal Police in relation to such a matter; or
 - (ba) a person who is providing, or has provided, confidential information to:
 - (i) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or
 - (ii) a staff member of ACLEI (within the meaning of that Act); or
 - (iii) a special investigator for the purposes of Division 4 of Part 12 of that Act;in relation to such a matter; or
 - (c) a person who is, or has been, a witness within the meaning of the *Witness Protection Act 1994* under the National Witness Protection Program.
- (2) For the purposes of this Act, a Commonwealth record is an exempt record if it is of such a nature that:
- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; and
 - (b) disclosure of the record would be contrary to the public interest.

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- (3) For the purposes of this Act, a Commonwealth record is an exempt record if:
- (a) it contains information or matter:
 - (i) that relates to the personal affairs, or the business or professional affairs, of any person (including a deceased person); or
 - (ii) that relates to the business, commercial or financial affairs of an organization or undertaking; and
 - (b) there is in force a law relating to taxation that applies specifically to information or matter of that kind and prohibits persons referred to in that law from disclosing information or matter of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.
- (4) In paragraphs (1)(e) and (f) and subsection (3), *law* means law of the Commonwealth or of a State or Territory.
- (5) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, a State, the Australian Capital Territory or the Northern Territory or by a local government authority.

35 Identification of exempt records

- (1) The Director-General, in consultation with the responsible Minister or a person authorized by the responsible Minister, shall make arrangements for determining the Commonwealth records in the open access period that are to be treated by the Archives as being exempt records and may make arrangements for determining the extent to which access in part to Commonwealth records identified as exempt records may be given without disclosing the information or matter by reason of which the records are exempt records.
- (2) Except in the case of records exempted from transfer to the care of the Archives by virtue of a determination under section 29, an examination of records for the purposes of subsection (1) shall be conducted on premises of the Archives.
- (3) The identification of records as exempt records in accordance with this section shall be conducted in accordance with programs approved by the Director-General and may take place before the records concerned become records in the open access period.

- (4) Determinations under subsection (1) in respect of records identified as exempt records shall be reviewed, in accordance with arrangements made as referred to in that subsection, at such intervals as the Director-General thinks appropriate having regard to the nature of the records concerned and any other relevant circumstances and whenever necessary for the purposes of reconsideration of a decision in accordance with section 42.
- (5) The functions of the Archives with respect to public access to Commonwealth records in the open access period shall be performed in conformity with the determinations made from time to time under this section, except to the extent that any such determination is inconsistent with a decision of the Tribunal on a review under this Act.

36 Forms of access

- (1) Where the Archives is required by this Part to cause a record to be made available for public access, any person is, subject to this Part, entitled to access to the record.
- (2) Access to a record may be given to a person in one or more of the following forms:
 - (a) a reasonable opportunity to inspect the record;
 - (b) on payment of a charge determined in accordance with the regulations, provision to the person of a copy of the record;
 - (c) in the case of a record from which information or matter can be produced or made available in a particular form by means of a computer, projector or other equipment, provision, on payment of a charge determined in accordance with the regulations, of access to that information or matter by the use of that equipment;
 - (d) in the case of a record by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision, on payment of a charge determined in accordance with the regulations, of a written transcript of the words recorded or contained in the record.
- (3) Subject to subsection (4), where a person has applied for access in a particular form, access shall be given in that form.

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- (4) Where the giving of access under this Part in the form requested by the person in his or her application for access:
- (a) would interfere unreasonably with the operations of the Archives or of another Commonwealth institution that has the custody of the record;
 - (b) would not, having regard to the physical nature of the record, be appropriate;
 - (c) would be detrimental to the preservation of the record; or
 - (d) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, a Commonwealth institution, a State, the Australian Capital Territory or the Northern Territory) subsisting in matter contained in the record, being matter that does not relate to the affairs of a Commonwealth institution;
- access in that form may be refused and access given in another form.
- (5) The reference in subsection (4) to copyright owned by a Commonwealth institution shall not be taken to extend to copyright owned by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation in a work or other subject matter forming part of its program material.

37 Conditions in respect of proper care of records

- (1) The Director-General may, for the purpose of ensuring the safe custody and proper preservation of any record, determine reasonable conditions to which access to the record is to be subject, or determine that the record is to be withheld from public access.
- (2) Where a record is withheld in accordance with subsection (1), a copy shall be provided where, in the opinion of the Director-General, it is practicable to do so without detriment to the proper preservation or safe custody of the record.

38 Access to part of exempt record

Where a record that would otherwise be required to be made available for public access under this Part is an exempt record, the Archives may, where it is reasonably practicable to do so, make arrangements for part of, or a copy of part of, that record to which access could be given without disclosing information or matter by

reason of which the record is an exempt record to be made available for public access in accordance with this Part.

39 Information as to existence of certain documents

- (1) Nothing in this Act shall be taken to require the Archives to give information as to the existence or non-existence of a record where information as to the existence or non-existence of that record, if included in a Commonwealth record, would cause that last-mentioned record to be an exempt record by virtue of paragraph 33(1)(a), (b) or (e).
- (2) Where an application to the Archives for access to a record relates to a record that is, or if it existed would be, of a kind referred to in subsection (1), the Archives may give notice in writing to the applicant that the Archives neither confirms nor denies the existence, as a Commonwealth record, of such a record but that, assuming the existence of such a record, it would be an exempt record, and, where such a notice is given:
 - (a) section 40 applies as if the decision to give such a notice were a decision referred to in that section; and
 - (b) the decision to give the notice shall, for the purposes of Division 4, be deemed to be a decision of the Archives refusing to grant the applicant access to the record on the ground that the record is an exempt record under paragraph 33(1)(a), (b) or (e), as the case may be.

40 Notification of decisions

- (1) This section applies in relation to an application to the Archives for access, or for an extension of partial access, to a record referred to in section 31, being an application:
 - (a) in writing;
 - (b) expressed to be made in accordance with this section;
 - (c) specifying an address in Australia at which notices under this Act may be sent to the person making the application; and
 - (d) providing such particulars, if any, concerning the record to which it relates as are contained in the Australian National Guide to Archival Material.
- (2) The Archives shall give all reasonable assistance to persons to enable them to make applications complying with paragraph (1)(d).

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- (3) Where an application to which this section applies is made, the Archives shall take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 90 days after the day on which the application is received by the Archives.
- (4) The regulations may make provision that subsection (3) is to have effect as if a specified shorter period were substituted for the period of 90 days specified in that subsection.
- (5) Where, in relation to an application, a decision is made relating to a refusal to grant access to a record in accordance with the application, the decision-maker shall cause the applicant to be given notice in writing of the decision and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision;
 - (b) where the decision is a decision of the Archives—state the name and designation of the person making the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to a review of the decision;
 - (ii) his or her rights to make a complaint to the Ombudsman in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii);including (where applicable) particulars of the manner in which an application for review under section 42 may be made.
- (6) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision of the kind referred to in subsection (5).
- (7) A notice under subsection (5) is not required to contain any matter that is of such a nature that its inclusion in a record would cause that record to be an exempt record under section 33.
- (8) Where:
 - (a) an application to which this section applies has been made;
 - (b) the period of 90 days, or such other period as is applicable in accordance with regulations under subsection (4), has elapsed

since the day on which the application was received by the Archives; and

- (c) notice of a decision on the application has not been received by the applicant;

the Archives shall, for the purpose of enabling an application to be made to the Tribunal under section 43, be deemed to have made, on the last day of that period, a decision refusing to grant access to the record on the ground that the record is an exempt record.

- (9) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning failure to make and notify to the applicant a decision on an application (whether the complaint was made before or after the expiration of the period referred to in subsection (8)), an application to the Tribunal under section 43 of this Act by virtue of that subsection shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*.
- (10) Where such a complaint is made before the expiration of the period referred to in subsection (8), the Ombudsman, after having investigated the complaint, may, if he or she is of the opinion that there has been unreasonable delay by the Archives in connection with the request, grant to the applicant a certificate certifying that he or she is of that opinion, and, if the Ombudsman does so, the Archives shall, for the purpose of enabling application to be made to the Tribunal under section 43, be deemed to have made, on the day on which the certificate is granted, a decision refusing to grant access to the record on the ground that the record is an exempt record.
- (11) Where, after an application has been made to the Tribunal by virtue of subsection (8) but before the Tribunal has finally dealt with the application, a decision in the matter to which the application relates is given by the Archives, being a decision that is not satisfactory to the applicant, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.
- (12) Before dealing further with an application made to it by virtue of subsection (8), the Tribunal may, on the application of the Director-General, allow further time to the Archives to deal with the application for access.

Division 4—Review of decisions

42 Internal reconsideration of decisions

- (1) Where a person has made an application to which section 40 applies and is dissatisfied with the decision on the application, he or she may, within 28 days after the day on which notice of the decision was given to him or her or within such further period as the Archives allows, apply in writing to the Archives for a reconsideration of the decision.
- (2) Where an application for reconsideration of a decision is made in accordance with this section, the Archives shall:
 - (a) reconsider the decision and for that purpose arrange for any necessary review under section 35 of a determination under that section; and
 - (b) as expeditiously as practicable, give notice to the applicant of the decision reached on the reconsideration (whether or not that decision confirms the previous decision).
- (3) A decision by the Archives on an application in accordance with this section for reconsideration of a decision shall be made after consideration of the application by the Director-General or a person authorized by him or her to deal with such applications.
- (4) The provisions of section 40 extend to a decision made under this section upon a review of a decision in relation to the provision of access to a record that is the subject of an application under that section.

43 Applications to Administrative Appeals Tribunal

- (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of a decision of the Archives in respect of access to a record, being:
 - (a) a decision refusing to grant to the applicant access to the record on the ground that the record is an exempt record or is a Commonwealth record to which Division 3 does not apply;
 - (b) a decision refusing to grant an extension of partial access to the record on the ground that the record is an exempt record and it is not practicable to make arrangements for giving the

- further access desired by the applicant in a form that would not disclose information or matter by reason of which the record is an exempt record;
- (c) a decision refusing to grant to the applicant access to the record on the ground that the record has been withheld from public access pending examination of the record under section 35;
 - (d) a decision refusing to grant to the applicant access to the record on the ground that a determination has been made under section 37 that the record is to be withheld from public access or refusing to grant to the applicant access to the record otherwise than on specified conditions determined under that section;
 - (e) a decision refusing to grant to the applicant access to the record in a particular form by reason of paragraph 36(4)(a), (b) or (d); or
 - (f) a decision refusing to allow a further period for making an application under subsection 42(1) for a reconsideration of a decision.
- (2) Subject to subsection (3), where, in relation to a decision referred to in subsection (1), a person is or has been entitled to apply under section 42 for a reconsideration of the decision, that person is not entitled to make an application under subsection (1) in relation to that decision, but may make such an application in respect of the decision made on such a reconsideration.
- (3) Subsection (2) does not prevent an application to the Tribunal in respect of a decision where:
- (a) the person concerned has applied under section 42 for a reconsideration of the decision;
 - (b) a period of 14 days has elapsed since the day on which that application was received by the Archives; and
 - (c) he or she has not been informed of the result of the review;
- and such an application to the Tribunal may be treated by the Tribunal as having been made within the time allowed by subsection (4) if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal.
- (4) Notwithstanding section 29 of the *Administrative Appeals Tribunal Act 1975*, the period within which (subject to any extension

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granted by the Tribunal) an application under subsection (1) of this section is to be made in respect of a decision is:

- (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant and ending on the sixtieth day after that day;
 - (b) where the decision is a decision that is deemed by subsection 40(8) or (10) to have been made—the period commencing on the day on which the decision is deemed to have been made and ending on the sixtieth day after that day; or
 - (c) where subsection 55(4) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that subsection and ending on the sixtieth day after that day.
- (5) If an application to the Tribunal for review of a decision is made before a reconsideration of the decision in accordance with section 42 has been completed and the result notified to the applicant, the Tribunal may, if it is satisfied that further time is reasonably necessary to enable the reconsideration to be completed, adjourn the proceedings for such time as it thinks fit.
- (6) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a decision in respect of which an application may be made to the Tribunal under this section where a notice under subsection 40(5) of this Act has been given to the applicant.
- (7) If the Tribunal, upon application for a declaration under this subsection made to it by a person to whom a notice has been furnished under subsection 40(5), considers that the notice does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision to which the notice relates, the Tribunal may make a declaration accordingly, and, where the Tribunal makes such a declaration, the person responsible for furnishing the notice shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, furnish to the applicant an additional notice or additional notices containing further and better particulars in relation to matters specified in the declaration with

respect to those findings, that evidence or other material or those reasons.

44 Powers of Tribunal

- (1) Subject to this section, in proceedings under this Division, the Tribunal has, in addition to any other power, the power to review any decision of the Archives upon an application for access to a record and to decide any matter in relation to that application that, under this Act, could have been or could be decided by the Archives, and any decision of the Tribunal under this section has the same effect as a decision of the Archives.
- (2) Where an applicant makes an application under section 43 in respect of a decision of the kind referred to in paragraph (1)(d) of that section, the Tribunal has power to grant access to the record to which the application relates, or to grant access to that record on particular conditions, notwithstanding any determination made by the Director-General under section 37 in relation to that record.
- (3) Where, in proceedings before the Tribunal in pursuance of an application under section 43, it is established that a record is an exempt record, the Tribunal does not, except as provided by subsection (7), have power to decide that access is to be granted to the record.
- (7) On a review in pursuance of an application to the Tribunal under section 43, the Tribunal may, if it is satisfied that it would be practicable to give access to, or to a copy of, part of an exempt record in a form that would not disclose information or matter by reason of which the record is an exempt record, direct that access be given accordingly.

46 Constitution of Tribunal for proceedings about certain exempt records

- (1) If an application is made to the Tribunal for review of a decision refusing to grant access to a record in accordance with an application under section 40, being a record that is:
 - (a) claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b); and

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- (b) not a record of the Australian Security Intelligence Organisation;

then the Tribunal must be constituted in accordance with subsection (2) for the purposes of any proceeding in relation to the application.

Note: Section 21AB of the *Administrative Appeals Tribunal Act 1975* contains the requirements for constitution of the Tribunal in proceedings about a record of the Australian Security Intelligence Organisation that is claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b).

- (2) For the purposes of a proceeding referred to in subsection (1), the Tribunal shall be constituted by:
- (a) 3 presidential members; or
 - (b) a presidential member alone.
- (3) In its application to a proceeding referred to in subsection (1), section 21A of the *Administrative Appeals Tribunal Act 1975* applies as if:
- (a) subsection (1) of that section were omitted and the following subsection substituted:

“(1) At any time during the hearing of a proceeding before the Tribunal constituted in accordance with subsection 46(2) of the *Archives Act 1983* by a presidential member alone, a party to the proceeding may make an application to the Tribunal as constituted for the purposes of that proceeding requesting that the Tribunal be reconstituted for the purposes of that proceeding.”; and
 - (b) subsection (3) of that section were omitted and the following subsection substituted:

“(3) The President may, after taking the submissions into account, if he or she considers that the matters to which the proceeding relates are of such public importance as to justify him or her in so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that the Tribunal is constituted by 3 presidential members.”.
- (4) In its application to a proceeding referred to in subsection (1), section 22 of the *Administrative Appeals Tribunal Act 1975* applies
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as if there were inserted after paragraph (1)(aa) of that section the following paragraphs:

- “(ab) if the Tribunal is constituted by presidential members of whom at least 2 are Judges and none of whom is the President—the senior Judge shall preside;
- (ac) if the Tribunal is constituted by presidential members none of whom is a Judge—one of those presidential members who is directed by the President to do so shall preside;”.

48 Modification of section 42 of the *Administrative Appeals Tribunal Act 1975*

In its application to a proceeding referred to in subsection 46(1) of this Act, section 42 of the *Administrative Appeals Tribunal Act 1975* applies as if subsection (3) of that section were omitted and the following subsection substituted:

- “(3) A question of law arising in a proceeding before the Tribunal constituted in accordance with subsection 46(2) of the *Archives Act 1983* by 3 presidential members shall:
 - (a) in a case where one only of those members is a Judge—be decided according to the opinion of that member; and
 - (b) in a case where 2 of those members are Judges—be decided according to the opinion of the majority.”.

50 Parties

For the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in respect of proceedings under this Part, a decision given by the Archives is taken to have been given by the Director-General.

50A Inspector-General of Intelligence and Security must be requested to give evidence in certain proceedings

- (1) This section applies in any proceedings before the Tribunal under this Act in relation to a record that is claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b).
- (2) Before determining that the record is not an exempt record, the Tribunal must request the Inspector-General of Intelligence and Security to appear personally and give evidence on:

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- (a) the damage that could reasonably be expected to be caused to the security, defence or international relations of the Commonwealth if the record were made available for public access; or
 - (b) whether it would be reasonable to maintain the confidentiality of information or matter to which both of the following apply by not making the record available for public access:
 - (i) the information or matter was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the *foreign entity*) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the *Commonwealth entity*);
 - (ii) the foreign entity advises the Commonwealth entity that the information or matter is still confidential.
- (3) Before determining that part of, or a copy of part of, the record is to be made available for public access under section 38, the Tribunal must request the Inspector-General to appear personally and give evidence on:
- (a) whether making that part, or a copy of that part, of the record available for public access could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth; or
 - (b) whether it would be reasonable to maintain the confidentiality of information or matter to which both of the following apply by not making that part, or a copy of that part, of the record available for public access:
 - (i) the information or matter was communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation (the *foreign entity*) to the Government of the Commonwealth, to an authority of the Commonwealth or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth (the *Commonwealth entity*);

- (ii) the foreign entity advises the Commonwealth entity that the information or matter is still confidential.
 - (4) Before hearing the evidence of the Inspector-General, the Tribunal must hear any evidence to be given or submissions to be made by or on behalf of:
 - (a) the Archives; or
 - (b) the Commonwealth institution of which the record is property.
 - (5) The Inspector-General must comply with a request under subsection (2) or (3) unless, in the opinion of the Inspector-General, the Inspector-General is not appropriately qualified to give evidence on the matters in relation to which the Inspector-General has been requested to give evidence.
 - (6) For the purposes of enabling the Inspector-General to comply with a request under subsection (2) or (3):
 - (a) the Tribunal must allow the Inspector-General to take possession of, and make copies of or take extracts from, any record given to the Tribunal for the purposes of the proceeding; and
 - (b) the Inspector-General may require the production of the record that is claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b); and
 - (c) the Inspector-General may require the production of any Commonwealth record that relates to the record mentioned in paragraph (b); and
 - (d) the Inspector-General may make copies of, or take extracts, from the records mentioned in paragraphs (b) and (c); and
 - (e) after such period as is reasonably necessary for the purposes of giving evidence to the Tribunal, the Inspector-General must:
 - (i) return the original of any record to the Tribunal or to the entity that produced the record; and
 - (ii) destroy any copies of or extracts taken from any record.
 - (7) The Inspector-General must permit a person who would be entitled to inspect a record mentioned in paragraphs (6)(a) to (d) if it were not in the possession of the Inspector-General to inspect the record at all reasonable times as the person would be so entitled.
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- (8) The Tribunal is not bound by any opinion of the Inspector-General expressed while giving evidence under this section.
- (9) The Tribunal must allow the Inspector-General a period within which to consider the records mentioned in paragraphs (6)(a) to (d) that is reasonable having regard to:
 - (a) the nature of the evidence that the Inspector-General has been requested to give; and
 - (b) the time required by the Inspector-General to perform the Inspector-General's other functions.
- (10) The fact that a person is obliged to produce a document under subsection (6) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that document.

51 Onus

In proceedings before the Tribunal in pursuance of an application under section 43:

- (a) the Archives has the onus of establishing that a decision given by the Archives was justified or that the Tribunal should give a decision adverse to the applicant; and
- (b) the Tribunal is not restricted by any determination made at any time under section 35.

52 Tribunal to ensure non-disclosure of certain matters

- (1) In determining whether the Tribunal is satisfied that it is desirable to make an order or orders under subsection 35(2) of the *Administrative Appeals Tribunal Act 1975* for the purposes of proceedings in relation to an application under section 43, the Tribunal must:
 - (a) have regard to:
 - (i) the necessity of avoiding the disclosure to the applicant of matter contained in a record to which the proceedings relate, being matter by reason of which the record is an exempt record; and
 - (ii) the necessity of avoiding the disclosure to the applicant of information of the kind referred to in subsection 39(1); and

- (b) where the proceedings relate to a record that is claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b)—give particular weight to a submission made by the Archives that it is desirable to make the order or orders under subsection 35(2) of the *Administrative Appeals Tribunal Act 1975* because the record contains information or matter of that kind.
- (2) Notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*:
 - (a) the Tribunal shall not, in its decision, or reasons for a decision, in a matter arising under this Act, include any matter or information of a kind referred to in paragraph (1)(a); and
 - (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his or her representative where it is necessary to do so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in paragraph (1)(a).

53 Production of exempt records

- (1) Section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a record that is claimed to be an exempt record, but in proceedings before the Tribunal in relation to such a record, if the Tribunal is not satisfied, by evidence on affidavit or otherwise, that the record is an exempt record, it may require the record to be produced for inspection by members of the Tribunal only.
- (1A) If, upon the inspection, the Tribunal is satisfied that the record is an exempt record, the Tribunal must return the record to the person by whom it was produced without permitting a person to have access to the record, or disclosing the contents of the record to a person, unless the person is:
 - (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
 - (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or
 - (c) in the circumstances permitted under paragraph 50A(6)(a)—the Inspector-General of Intelligence and Security.

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- (2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt record for the purpose of determining whether, and to what extent, it is practicable for arrangements to be made in accordance with section 38 and, where an exempt record is produced by reason of such a requirement, the Tribunal shall, after inspection of the record by the members of the Tribunal as constituted for the purposes of the proceeding, return the record to the person by whom it was produced without permitting a person to have access to the record or disclosing the contents of the record to a person, unless the person is:
 - (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
 - (b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff; or
 - (c) in the circumstances permitted under paragraph 50A(6)(a)—the Inspector-General of Intelligence and Security.
- (5) Subsection (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that subsection to be sent to the Federal Court of Australia in accordance with section 46 of the *Administrative Appeals Tribunal Act 1975*, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff of the Court in the course of the performance of his or her duties as a member of that staff.
- (6) Subsection (5) does not prevent the Federal Court of Australia from causing the document concerned to be sent to the Federal Circuit Court of Australia as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*.
- (7) If a document produced in accordance with subsection (1) or (2) is sent to the Federal Circuit Court of Australia as mentioned in subparagraph 46(1)(c)(i) of the *Administrative Appeals Tribunal Act 1975*, the Federal Circuit Court of Australia must do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than:

- (a) the Judge who constitutes the Federal Circuit Court of Australia for the purposes of the proceeding before the Federal Circuit Court of Australia; or
- (b) a member of the staff of the Federal Circuit Court of Australia in the course of the performance of his or her duties as a member of that staff.

55 Complaints to Ombudsman

- (1) Notwithstanding anything contained in this Act or in subsection 6(3) of the *Ombudsman Act 1976* but subject to subsection 6(2) of that Act, the exercise of the powers of the Ombudsman under that Act in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal.
- (2) For the purposes of the *Ombudsman Act 1976*, action taken by the Archives in respect of an application made to the Archives in relation to access to a record is declared to be action taken by the Archives in relation to a matter of administration.
- (3) A reference in subsection (2) to action taken by the Archives shall be read as a reference to all such actions as would, for the purposes of the *Ombudsman Act 1976*, be treated as being action taken by the Archives.
- (4) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning a decision under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of that Act.
- (5) Notwithstanding anything contained in the *Ombudsman Act 1976*, a report under that Act in respect of a complaint arising out of an application under this Act shall not contain information of the kind referred to in subsection 39(1) of this Act.

55A Automatic stay of certain decisions on appeal

- (1) This section applies if:
 - (a) a person applies, under section 43, to the Tribunal for review of a decision refusing to make a record that is claimed to be an exempt record available for public access; and

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- (b) the Tribunal decides that a person may have access to the record, or part of the record; and
 - (c) the Archives institutes an appeal to the Federal Court of Australia from the decision of the Tribunal.
- (2) If this section applies to a decision of the Tribunal, the operation of the decision is stayed by force of this section from the time at which the appeal is instituted.
- (3) If the Archives appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Court of Australia, the stay continues to have effect until the earlier of:
 - (a) the time at which the decision of the Federal Court of Australia on the appeal takes effect; and
 - (b) the time otherwise determined by the Federal Court of Australia.
- (4) If the Archives appeals to the Federal Court of Australia from the decision of the Tribunal and the appeal in relation to the decision is determined by the Federal Circuit Court of Australia, the stay continues to have effect until the earlier of:
 - (a) the time at which the decision of the Federal Circuit Court of Australia on the appeal takes effect; and
 - (b) the time otherwise determined by the Federal Circuit Court of Australia.
- (5) Nothing in this section affects the power of the Federal Court of Australia or the Federal Circuit Court of Australia to make orders under section 44A of the *Administrative Appeals Tribunal Act 1975* in relation to matters other than staying the decision of the Tribunal.

Division 5—Miscellaneous

56 Arrangements for accelerated or special access

- (1) The Minister or a person authorized by him or her may, in accordance with arrangements approved by the Prime Minister, cause all records in a particular class of Commonwealth records not in the open access period to be available for public access.
- (2) The Minister or a person authorised by the Minister may, in accordance with arrangements approved by the Prime Minister, cause Commonwealth records to be made available to a person in such circumstances as are specified in the regulations notwithstanding that the Commonwealth records concerned are not otherwise available for public access under this Act.
- (3) A person is guilty of an offence if:
 - (a) records are made available to the person under subsection (2) on conditions to be observed by the person; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes such a condition.

Penalty: 20 penalty units.

- (4) An arrangement approved by the Prime Minister under subsection (2) shall be recorded in writing, and the Minister shall cause a copy of the arrangement to be made available to the Council.
- (5) The Minister shall, not later than 3 months after the commencement of this Part and thereafter at intervals of not more than 3 months, cause to be made available to the Council a statement setting out particulars of:
 - (a) each request for access to a document under subsection (2) that is made during the period to which the statement relates; and
 - (b) the decision of the Minister or authorized person in relation to each such request;not being a statement that would reveal the identity of the person who made the request.

Section 57

57 Protection against certain actions

- (1) Where, in the ordinary course of the administration of this Act, access is given to a record as being a record required by this Part to be made available for public access:
 - (a) no action for defamation, breach of confidence or infringement of copyright lies, by reason of the authorizing or giving of the access, against the Commonwealth or any person concerned in the authorizing or giving of the access;
 - (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the record or any other person by reason of that author or other person having supplied the record to a Commonwealth institution; and
 - (c) a person concerned in the authorizing or giving of the access is not guilty of a criminal offence by reason only of the authorizing or giving of the access.
- (1A) Where access to a record is given:
 - (a) under arrangements of the kind referred to in subsection 6(2);
 - (b) in good faith in the belief that the record is a record to which subsection 31(1) applies; or
 - (c) by making the record available:
 - (i) under subsection 56(1), for public access; or
 - (ii) under subsection 56(2), to a person;the access given to the record shall be taken, for the purposes of subsection (1), to be given to the record as being a record required by this Part to be made available for public access.
- (2) The giving of access to a record (including an exempt record) under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the record or of its contents by the person to whom the access was given.

58 Access to records apart from Act

Nothing in this Act prevents a person from publishing or otherwise giving access to records (including exempt records), otherwise than in pursuance of this Act where he or she can properly do so or is required by law to do so.

59 Security classifications

Where a record has become available for public access in accordance with this Part, any security classification applicable to the record ceases to have effect for any purpose.

60 Transitional provisions relating to access

For the purposes of this Part, where, in accordance with the administrative arrangements in operation before the commencement of this Part, a record in the open access period has been withheld from public access or has been made available for public access, a determination shall be deemed to have been made in accordance with section 35 immediately after the commencement of this Part that the record is to be treated as an exempt record, or that the record is not to be treated as an exempt record, as the case may be.

Part VI—Samples of material for the Archives

62 Samples of material for Archives

- (1) The Minister may, by notice published in the *Gazette*, declare that a specified class of objects, not being objects referred to in subsection (3), (4) or (5), is a class to which subsection (2) applies.
- (2) The Archives may require any Commonwealth institution to cause to be transferred to the care of the Archives samples of objects included in a class of objects to which this subsection applies that are the property of the Commonwealth or of the Commonwealth institution.
- (3) The Reserve Bank of Australia shall cause to be transferred to the care of the Archives such samples as the Archives requires of notes printed by, or under the authority of, the bank that are legal tender throughout the Commonwealth.
- (4) The Controller of the Royal Australian Mint shall cause to be transferred to the care of the Archives such samples as the Archives requires of current coins caused by the Treasurer to be made.
- (5) The Australian Postal Corporation shall cause to be transferred to the care of the Archives such samples of current postage stamps issued by the Corporation as the Archives requires.

Part VII—Care of material of the Archives

63 Location of material of the Archives

- (1) Subject to this Part, material of the Archives shall be kept at such places as the Director-General considers appropriate.
- (2) In considering the places at which material of the Archives should be kept, the Director-General shall take into account:
 - (a) the convenience of persons who are likely to require access to the material;
 - (b) the desirability of keeping related material in the same place; and
 - (c) the appropriateness of keeping in a State or Territory material that relates in particular to that State or Territory or to places in that State or Territory.
- (3) Copies of records forming part of the material of the Archives may be kept in such places as the Director-General considers appropriate.

64 Custody of material of the Archives other than by Archives

- (1) Subject to any other law of the Commonwealth and to the rights of Commonwealth institutions, the Archives may, if the Director-General considers it appropriate to do so, make arrangements with a person for records required to be transferred to the care of the Archives, or for material of the Archives, to be kept in the custody of the person.
- (2) Such arrangements must:
 - (a) provide for the care of the material to which the arrangements relate; and
 - (b) provide for the regular inspection of that material by the Archives; and
 - (c) enable the Archives to meet its obligations under subsections 29(3), 30(1) and 31(1) in respect of that material; and

Section 64

- (d) require the person with the custody of the records to transfer the custody of the records to the Archives if the Director-General so directs.

Note: Subsections 29(3), 30(1) and 31(1) deal with the availability of records.

- (3) All material of the Archives that has been delivered to the Archives in accordance with the *Copyright Act 1968*, other than Commonwealth records, shall, subject to the consent of the Director-General of the National Library of Australia, be deposited by the Archives with the National Library of Australia.

Part VIII—Registers and guide relating to Archives

65 Australian National Register of Records

- (1) The Archives shall maintain a register to be known as the Australian National Register of Records.
- (2) The Register shall contain such particulars of the material of the Archives as the Director-General considers appropriate.
- (3) The Register may also contain such particulars as the Director-General considers appropriate of:
 - (a) current Commonwealth records;
 - (b) material in State archives;
 - (c) material in other archives, including private archives; and
 - (d) other archival resources relating to Australia.
- (4) For the purposes of this section, the Archives shall seek the co-operation of the owners and custodians of material in State archives and other archives.

66 Australian National Guide to Archival Material

- (1) The Archives shall maintain a guide to be known as the Australian National Guide to Archival Material.
- (2) Subject to subsection (4), the Guide shall contain particulars, in such form as the Director-General considers appropriate, of all Commonwealth records in the open access period that have been examined in accordance with subsection 35(1).
- (3) Subject to subsection (4), the Guide may also contain copies of particulars contained in the Australian National Register of Records.
- (4) The Guide shall not include:
 - (a) particulars that would disclose any information or matter of a kind referred to in section 33; or
 - (b) particulars the disclosure of which would be contrary to any arrangements entered into by the Archives in accordance with this Act.

Section 67

- (5) A copy of the Guide shall be kept at the principal office of the Archives in each State and Territory in which the Archives maintains an office and may be kept at such other offices of the Archives as the Director-General considers appropriate.
- (6) A person may inspect the Guide and is entitled, on the payment of the appropriate charge determined under the regulations, to receive a copy of the Guide or any part of the Guide.

67 Australian National Register of Research Involving Archives

- (1) The Archives shall establish and maintain a register to be known as the Australian National Register of Research Involving Archives in which the Archives shall endeavour to list all research that is being, or has been, conducted in or in relation to Australia and has involved, or will involve, the use of archival material.
- (2) For the purposes of subsection (1), the Archives shall seek the co-operation of all persons and organizations interested in research of the kind referred to in that subsection, including the authorities of the States responsible for State archives and the universities.
- (3) A copy of the Register shall be kept at the principal office of the Archives in each State and Territory in which the Archives maintains an office and may be kept at such other offices of the Archives as the Director-General considers appropriate.
- (4) A person may inspect the Register and is entitled, on the payment of the prescribed charge (if any), to receive a copy of an entry in the Register.

Part IX—Miscellaneous

68 Annual Report

- (1) The Archives shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of its operations during the 12 months ending on that date.
- (2) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report concerning the proceedings of the Council during the 12 months ending on that date.
- (3) The first report under subsection (1) and the first report under subsection (2) shall relate to the period commencing on the date of commencement of this Part and ending on the next following 30 June.
- (4) The Minister shall cause a copy of a report furnished to him or her by the Archives or the Council under this section to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him or her.

69 Certified copies of records

- (1) The Director-General may give a certificate that a record referred to in the certificate is a true copy of a record that is in the care of the Archives and such a certificate is *prima facie* evidence in all courts of the matters stated in the certificate.
- (2) A writing purporting to be a certificate given under this section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

Section 69A

69A Charges for discretionary service for Commonwealth institutions

Where:

- (a) the Archives provides a discretionary service for a Commonwealth institution; and
- (b) this Act does not otherwise provide for a charge for the service;

the Archives may make a charge for the service of an amount, or at a rate, determined in writing by the Director-General.

70 Transitional

- (1) A reference in any law of the Commonwealth or of a Territory, or in any agreement or arrangement, made before the commencement of Part II, to the Commonwealth Archives Office, to the Archival Authority or to the authority concerned with the preservation of the archives shall, in respect of any time after the commencement of Part II, be read as a reference to the Archives.
- (2) Notwithstanding Part II, arrangements in operation immediately before the commencement of Part II relating to the disposal or custody of Commonwealth records may continue in operation until the Director-General otherwise directs.
- (3) Where, immediately before the commencement of Part II, any records were in the custody of the establishment known as the Australian Archives, as existing at that time, under arrangements by which the custody of the records was accepted from a person other than a Commonwealth institution by the Commonwealth, or by an authority or person acting on behalf of the Commonwealth, those arrangements (including any provision of those arrangements concerning access to or disposal of those records) have effect from that commencement as if they were made, after that commencement, by that person with the Archives, and subsection 6(2) applies accordingly.

71 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

including, but without limiting the generality of the foregoing, regulations making provision for or in relation to the making of, or the requiring of deposits on account of, charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of:

- (c) searches carried out to comply with applications made for access to, or for information contained in, records;
- (d) the provision of copies or transcripts of records in pursuance of applications made in accordance with this Act; and
- (e) the provision of prescribed discretionary services for persons other than Commonwealth institutions.

Endnotes

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Archives Act 1983*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Archives Act 1983	79, 1983	3 Nov 1983	6 June 1984 (<i>see Gazette</i> 1984, No. S206)	
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s. 3: (a)	ss. 2(32) and 6(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s. 3: Royal Assent (b)	s. 9
Intelligence and Security (Consequential Amendments) Act 1986	102, 1986	17 Oct 1986	1 Feb 1987 (<i>see</i> s. 2 and <i>Gazette</i> 1987, No. S13)	—
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s. 3: Royal Assent (c)	s. 5(1)
A.C.T. Self-Government (Consequential Provisions) Act 1988	109, 1988	6 Dec 1988	s. 32 (in part): 11 May 1989 (<i>see Gazette</i> 1989, No. S164) (d)	—
Postal Services Amendment Act 1988	126, 1988	14 Dec 1988	ss. 4, 5, 9–11, 21(2) and 22(1): 1 Jan 1989 (<i>see Gazette</i> 1988, No. S402) ss. 12, 21(3) and 22(2): 30 June 1989 (<i>see Gazette</i> 1989, No. S216) Remainder: Royal Assent	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	s. 5: Royal Assent (<i>e</i>)	—
Administrative Services Legislation Amendment Act 1990	80, 1990	23 Oct 1990	23 Oct 1990	—
Special Broadcasting Service Act 1991	180, 1991	25 Nov 1991	s. 116: 23 Dec 1991 (<i>f</i>)	—
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Schedule (Part 1): 10 Mar 1993 (<i>see Gazette</i> 1993, No. GN17) (<i>g</i>) Schedule (Part 5): 30 Aug 1995 (<i>see Gazette</i> 1995, No. S324) (<i>g</i>)	s. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
as amended by				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	10 Mar 1993	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	s. 3 (item 17): Royal Assent (<i>h</i>)	—
Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994	33, 1994	15 Mar 1994	ss. 3–6: Royal Assent (<i>i</i>)	s. 6
Archives Amendment Act 1995	10, 1995	15 Mar 1995	ss. 1 and 2: Royal Assent ss. 3(c) and 6–8: (<i>j</i>) Remainder: 7 June 1995 (<i>see Gazette</i> 1995, No. S201)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 10) and Schedule 5 (items 16–18): Royal Assent (<i>k</i>)	—
Parliamentary Service (Consequential Amendments) Act 1997	189, 1997	7 Dec 1997	(<i>l</i>)	s. 2 (am. by 145, 1999, Sch. 1 [item 2])

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
as amended by				
Parliamentary Service Act 1999	145, 1999	11 Nov 1999	(<i>m</i>)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 100–103): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>n</i>)	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Schedule 3 (items 1, 17): (<i>o</i>)	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Schedule 5: 23 Dec 1999 (<i>p</i>)	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	Schedule 2 (item 2) and Schedule 3 (items 20, 34, 35): 2 July 2000 (<i>see Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 34, 35)
Census Information Legislation Amendment Act 2000	30, 2000	19 Apr 2000	19 Apr 2000	—
Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001	5, 2001	20 Mar 2001	s. 4 and Schedule 1 (items 1–6): (<i>q</i>)	s. 4
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (item 1): 1 Jan 2003	—
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Schedule 2 (items 9–11): 17 June 2004	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Schedule 1 (items 203–205): 16 May 2005	Sch. 1 (item 205)

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Schedules 1–8: 2 Dec 2005 Remainder: Royal Assent	—
Census Information Legislation Amendment Act 2006	10, 2006	23 Mar 2006	Schedules 1 and 2: 20 April 2006 Remainder: Royal Assent	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (item 2): 30 Dec 2006 (<i>see s. 2(1)</i>)	—
Quarantine Amendment (Commission of Inquiry) Act 2007	158, 2007	24 Sept 2007	24 Sept 2007	—
Archives Amendment Act 2008	113, 2008	31 Oct 2008	1 Nov 2008	Sch. 1 (items 6, 24)
Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009	99, 2009	6 Oct 2009	Schedule 2: 7 Oct 2009	Sch. 2 (items 19–22)
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009	102, 2009	8 Oct 2009	Schedule 1 (items 62E–62H): 9 Oct 2009	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Schedule 3 (items 1–6, 35–37, 40) and Schedule 7: (<i>r</i>)	Sch. 3 (item 40) and Sch. 7
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 75, 76) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
National Portrait Gallery of Australia (Consequential and Transitional Provisions) Act 2012	149, 2012	6 Nov 2012	Schedule 1: [see s. 2(1) and Endnote 3]	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 28): 12 Apr 2013 (see s. 2(1)) Schedule 2 (item 2): (s)	—

- (a) The *Archives Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsections 2(1) and (5) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
 - (5) The amendment of subsection 44(3) of the *Archives Act 1983* made by this Act shall be deemed to have come into operation on 6 June 1984.
- (b) The *Archives Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *Archives Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Archives Act 1983* was amended by section 32 only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.
- (e) The *Archives Act 1983* was amended by section 5 only of the *Defence Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:

Endnote 1—Legislation history

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- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Archives Act 1983* was amended by section 116 only of the *Special Broadcasting Service Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (g) The *Archives Act 1983* was amended by the Schedule (Parts 1 and 5) of the *Qantas Sale Act 1992*, subsections 2(2), (3)(a) and (c) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
- (a) in the case of sections 30, 31, 35, 37, 39, 43 and 50 and Parts 1 and 2 of the Schedule—the day is not earlier than the substantial minority sale day; and
- (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
- (h) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (i) The *Archives Act 1983* was amended by sections 3–6 only of the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*, subsection 2(1) of which provides as follows:
- (1) Except for subsection 15(1), this Act commences on the day on which it receives the Royal Assent.
- (j) The *Archives Act 1983* was amended by subsection 3(c) and sections 6–8 only of the *Archives Amendment Act 1995*, subsection 2(2) of which provides as follows:
- (2) Paragraph 3(c) and sections 6, 7 and 8 are taken to have commenced immediately after the commencement of the *Witness Protection Act 1994*.
- The *Witness Protection Act 1994* came into operation on 18 April 1995.
- (k) The *Archives Act 1983* was amended by Schedule 4 (item 10) and Schedule 5 (items 16–18) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
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Endnotes

Endnote 1—Legislation history

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (l) Section 2 of the *Parliamentary Service (Consequential Amendments) Act 1997* provides as follows:
- 2 This Act commences at the time when the *Parliamentary Service Act 1999* commences.
- The *Parliamentary Service Act 1999* came into operation on the same day as the *Public Service Act 1999*, immediately after that Act commenced.
- The *Public Service Act 1999* came into operation on 5 December 1999 (see *Gazette* 1999, No. S584).
- (m) Section 2 of the *Parliamentary Service Act 1999* provides as follows:
- 2 This Act commences, or is taken to have commenced, on the same day as the *Public Service Act 1999*, immediately after the commencement of that Act.
- The *Public Service Act 1999* came into operation on 5 December 1999 (see *Gazette* 1999, No. S584).
- (n) The *Archives Act 1983* was amended by Schedule 1 (items 100–103) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (o) The *Archives Act 1983* was amended by Schedule 3 (items 1 and 17) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- Schedule 3*
- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules to this Act commenced on Royal Assent.
- (p) The *Archives Act 1983* was amended by Schedule 5 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.
- (q) The *Archives Act 1983* was amended by Schedule 1 (items 1–6) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the latest of the following times:

Endnote 1—Legislation history

- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (r) Subsection 2(1) (items 4, 6 and 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 3, items 1 to 14	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010
6. Schedule 3, items 16 to 40	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010

- (s) Subsection 2(1) (items 2 and 3) of the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Endnotes

Endnote 1—Legislation history

Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as item 1 of Schedule 1 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> commences.	12 April 2013
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	12 April 2013

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Archives Act 1983*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part I	
s. 2A	ad. No. 113, 2008
s. 3	am. No. 109, 1988; No. 80, 1990; No. 196, 1992; No. 33, 1994; No. 10, 1995; No. 189, 1997 (as am. by No. 145, 1999); No. 146, 1999; No. 30, 2000; No. 5, 2001; No. 135, 2003; No. 10, 2006; No. 158, 2007; No. 113, 2008; No. 102, 2009; No. 51, 2010; No. 46, 2011
Note to s. 3(7)	ad. No. 10, 2006 am. No. 51, 2010
ss. 3A, 3B	ad. No. 10, 1995
s. 3C	ad. No. 113, 2008
Note to s. 3C(1)	am. No. 46, 2011
s. 4A	ad. No. 5, 2001
Part II	
Heading to Part II	rs. No. 30, 2000
Heading to s. 5	am. No. 30, 2000
s. 5	am. No. 30, 2000; No. 113, 2008
s. 6	am. No. 109, 1988; No. 113, 2008
s. 6A	ad. No. 113, 2008
Part III	
s. 7	am. No. 43, 1996; No. 146, 1999; No. 30, 2000
s. 8	am. No. 43, 1996
s. 9	am. No. 146, 1999
Part IV	
Heading to Part IV	rs. No. 30, 2000
Heading to s. 10	rs. No. 30, 2000
s. 10	am. No. 43, 1996; No. 30, 2000
ss. 13–17	am. No. 43, 1996

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part V	
Division 1	
Heading to s. 22.....	am. No. 158, 2007
s. 22.....	am. No. 158, 2007; No. 113, 2008; No. 102, 2009
s. 22A.....	ad. No. 33, 1994 am. No. 51, 2010
s. 22B.....	ad. No. 30, 2000 rs. No. 10, 2006
s. 23.....	am. No. 109, 1988
Division 2	
s. 24.....	am. No. 30, 2000; No. 5, 2001; No. 113, 2008
s. 26.....	am. No. 76, 1986; No. 5, 2001; No. 51, 2010
s. 27.....	rs. No. 113, 2008 am. No. 51, 2010
Note to s. 28.....	ad. No. 113, 2008
s. 28A.....	ad. No. 10, 1995
s. 29.....	am. No. 102, 1986; No. 75, 1990; No. 10, 1995; No. 43, 1996; No. 161, 1999; No. 128, 2005; No. 113, 2008; No. 99, 2009
Note to s. 29(3).....	ad. No. 113, 2008
s. 30.....	rs. No. 113, 2008 am. No. 51, 2010
Heading to s. 30A.....	am. No. 10, 2006
s. 30A.....	ad. No. 30, 2000 am. No. 10, 2006
Division 3	
s. 31.....	am. No. 113, 2008
s. 32.....	am. No. 109, 1988
s. 33.....	am. No. 109, 1988; No. 10, 1995; No. 43, 1996; No. 125, 2002; No. 86, 2006; No. 51, 2010
s. 34.....	am. No. 43, 1996; No. 146, 1999 rep. No. 99, 2009

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 35	am. No. 113, 2008
s. 36	am. No. 109, 1988; No. 180, 1991; No. 43, 1996
s. 40	am. No. 43, 1996
Division 4	
s. 41	rep. No. 99, 2009
ss. 42, 43	am. No. 43, 1996
s. 44	am. No. 165, 1984; No. 99, 2009
s. 45	am. No. 43, 1996 rep. No. 99, 2009
Heading to s. 46	rs. No. 99, 2009
s. 46	am. No. 43, 1996; No. 99, 2009
s. 47	am. No. 10, 1995; No. 43, 1996; No. 9, 2000 rep. No. 99, 2009
s. 48	am. No. 38, 2005
s. 49	am. No. 43, 1996 rep. No. 99, 2009
s. 50	rs. No. 99, 2009
s. 50A	ad. No. 99, 2009 am. No. 51, 2010
s. 52	am. No. 43, 1996; No. 99, 2009
s. 53	am. No. 43, 1996; No. 194, 1999; No. 99, 2009; No. 13, 2013
s. 54	rep. No. 99, 2009
s. 55A	ad. No. 99, 2009; No. 13, 2013
Division 5	
s. 56	am. No. 76, 1986; No. 43, 1996; No. 5, 2001
s. 57	am. No. 38, 1988
s. 58	am. No. 43, 1996
Part VI	
Heading to Part VI	rs. No. 113, 2008

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 61	am. No. 43, 1996; No. 5, 2001 rep. No. 113, 2008
s. 62	am. No. 126, 1988; No. 113, 2008
Part VII	
s. 64	am. No. 113, 2008
Part VIII	
s. 66	am. No. 38, 1988; No. 99, 2009
Part IX	
s. 68	am. No. 43, 1996
s. 69	am. No. 113, 2008
s. 69A	ad. No. 80, 1990
s. 71	am. No. 165, 1984; No. 80, 1990

Endnote 3—Uncommenced amendments

This endnote sets out amendments of the *Archives Act 1983* that have not yet commenced.

National Portrait Gallery of Australia (Consequential and Transitional Provisions) Act 2012 (Act No. 149, 2012)**Schedule 1****1 Subsection 3(1) (at the end of paragraphs (a) and (b) of the definition of *exempt material*)**

Add “or”.

2 Subsection 3(1) (paragraph (c) of the definition of *exempt material*)

Omit “Australian National Gallery;”, substitute “National Gallery of Australia; or”.

3 Subsection 3(1) (after paragraph (c) of the definition of *exempt material*)

Insert:

(ca) material included in the national collection maintained by the National Portrait Gallery of Australia; or

4 Subsection 3(1) (paragraph (d) of the definition of *exempt material*)

Omit “Museum of Australia”, substitute “National Museum of Australia”.

Endnotes

Endnote 4—Misdescribed amendments [none]

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.

Endnote 5—Modifications

This endnote sets out modifications of the *Archives Act 1983*.

Archives (Records of the Parliament) Regulations (SR 1995 No. 91)**Schedule Modifications of the Act**

(regulation 5)

1 New sections 23A and 23B

1.1 After section 23, insert in Division 2 of Part V:

23A Interpretation

In Divisions 2 and 3, unless the contrary intention appears:

Class A record means:

- (a) the record of the proceedings of the Senate as recorded in the Journals of the Senate; or
- (b) the record of the proceedings of the House of Representatives as constituted by the Votes and Proceedings of the House of Representatives; or
- (c) a record that is:
 - (i) laid before, or tabled in; and
 - (ii) in the possession of, the Senate or the House of Representatives; or
- (d) a record:
 - (i) that is presented to a committee in camera or on a confidential or restricted basis; and
 - (ii) that is in the possession of the committee, the Senate or the House of Representatives; and
 - (iii) that the committee, the Senate or the House of Representatives respectively has not authorised to be published; or
- (e) a record prepared by:
 - (i) an officer of a Parliamentary Department; or

- (ii) a person employed by, or performing duties for, a Parliamentary Department;

that relates to a record presented to a committee and is in the possession of:

- (iii) the committee; or
- (iv) the Senate; or
- (v) the House of Representatives; or
- (vi) a Parliamentary Department.

Class B record means a record in the possession of the Senate, the House of Representatives or a Parliamentary Department that is not a Class A record.

committee means:

- (a) a committee of the Parliament that consists of Senators and Members of the House of Representatives; or
- (b) a committee of the Senate or of the House of Representatives.

disapproved practice, in relation to a Parliamentary Department, means an administrative practice of the Department of which the Archives has notified the Department in writing that it disapproves.

Head of the Department means:

- (a) in the case of records that are in the possession of the Department of the Senate—the Clerk of the Senate; and
- (b) in the case of records that are in the possession of the Department of the House of Representatives—the Clerk of the House of Representatives; and
- (c) in the case of records that are in the possession of the Joint House Department—the Secretary to the Joint House Department; and
- (d) in the case of records that are in the possession of the Department of the Parliamentary Library—the Parliamentary Librarian; and
- (e) in the case of records that are in the possession of the Department of the Parliamentary Reporting Staff—the Principal Parliamentary Reporter.

Parliamentary practice means:

- (a) a normal administrative practice of a Parliamentary Department that is not a disapproved practice; or
- (b) a practice required by, or to implement:
 - (i) a Standing Order of either House; or
 - (ii) a Sessional Order of either House; or
 - (iii) a Resolution adopted by either House; or
 - (iv) a ruling of the President or the Speaker; or
- (c) a practice approved by the President or the Speaker.

President means:

- (a) the President of the Senate; or
- (b) if the Deputy President of the Senate and the Chairman of Committees is performing the duties of the President—the Deputy President and Chairman of Committees; or
- (c) if a person is deemed to continue to be the Presiding Officer of the Senate under section 3 or 6 of the *Parliamentary Presiding Officers Act 1965*—the person; or
- (d) if a Senator is elected by the Senate to preside over the Senate in the absence of the President and the Chairman of Committees—the Senator.

Presiding Officer means:

- (a) in the case of records that are in the possession of:
 - (i) the Senate; or
 - (ii) a committee of the Senate; or
 - (iii) the Department of the Senate;the President; and
- (b) in the case of records that are in the possession of:
 - (i) the House of Representatives; or
 - (ii) a committee of the House of Representatives; or
 - (iii) the Department of the House of Representatives;the Speaker; and
- (c) in the case of records that are in the possession of:
 - (i) a committee of the Parliament that consists of Senators and Members; or
 - (ii) the Joint House Department; or

- (iii) the Department of the Parliamentary Library; or
- (iv) the Department of the Parliamentary Reporting Staff; the President and the Speaker;

Speaker means:

- (a) the Speaker of the House of Representatives; or
- (b) if the Deputy Speaker of the House of Representatives is performing the duties of the Speaker—the Deputy Speaker; or
- (c) if a person is deemed to continue to be the Presiding Officer of the House of Representatives under section 3 or 6 of the *Parliamentary Presiding Officers Act 1965*—the person.

23B Application of the Act to records

- (1) Subsection 24(5) of the Act applies to Class A and Class B records.
- (2) Subsections 33(4), 33(5), 35(2), 35(3), 35(4), 36(2) and 36(3), paragraphs 36(4)(b) and (c), subsections 36(5) and 37(2) and section 40 of the Act apply to Class B records.

2 Section 24 (Disposal, destruction, etc, of Commonwealth records)

- 2.1 Subsection 24(1):
Omit ‘Commonwealth’, substitute ‘Class A or Class B’.
- 2.2 Subsection 24(2):
Omit the subsection, substitute:
 - (2) Subsection (1) does not apply to anything done in relation to a Class A record:
 - (a) in accordance with a law; or
 - (b) with the permission of:
 - (i) in the case of journals, records and documents laid before the Senate—the Senate by resolution; or
 - (ii) in any other case—the Presiding Officer; or
 - (c) in accordance with a Parliamentary practice; or

- (d) to give the record to a committee for the purposes of the committee; or
 - (e) to give the record to the Head of the Department for the purposes of the Department; or
 - (f) if the record is not in the custody of a committee or a Department that is entitled to custody of the record—to give the record to the committee or Department.
- (2A) Subsection (1) does not apply to anything done in relation to a Class B record:
- (a) in accordance with a law; or
 - (b) with the permission of the Archives; or
 - (c) in accordance with a Parliamentary practice; or
 - (d) if the record is not in the custody of a committee or a Department that is entitled to custody of the record—to give the record to the committee or Department.
- 2.3 Subsection 24(4):
Omit the subsection, substitute:
- (4) This section does not authorise the Archives to permit the destruction or other disposal of a Class B record without the consent, in writing, of the Presiding Officer.

3 Section 25 (Advice to Council on disposal practices)

- 3.1 Subsection 25(1):
Omit ‘Commonwealth records’ (wherever occurring), substitute ‘Class B records’.
- 3.2 Paragraph 25(1)(a):
Omit ‘any particular Commonwealth institution’, substitute ‘the Presiding Officer’.
- 3.3 Subsection 25(1):
Omit ‘a Commonwealth institution’ (wherever occurring), substitute ‘the Presiding Officer’.
- 3.4 Subsection 25(2):
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Omit ‘a Commonwealth institution’, substitute ‘the Presiding Officer’.

- 3.5 Subsection 25(2):
Omit ‘that institution’, substitute ‘the Presiding Officer’.

4 Section 26 (Alteration of Commonwealth records)

- 4.1 Subsection 26(1):
Omit ‘Commonwealth’, substitute ‘Class A or Class B’.
- 4.2 After subsection 26(1), insert:
- (1A) Subsection (1) does not apply to anything done in relation to a Class A record:
- (a) in accordance with a law; or
 - (b) with the permission, in writing, of the Presiding Officer; or
 - (c) in the case of journals, records and documents laid before the Senate—in accordance with a resolution of the Senate; or
 - (d) in accordance with a Parliamentary practice.
- 4.3 Subsection 26(2):
After ‘done’, insert ‘in relation to a Class B record’.

5 Section 27 (Transfer of Commonwealth records to Archives)

- 5.1 Omit the section, substitute:

27 Transfer of Class A and Class B records to the Archives

- (1) The Presiding Officer may make an agreement, in writing, with the Director-General:
- (a) to allow Class A records to be transferred to the custody of the Archives; and
 - (b) to require the Archives to hold the records under the arrangements specified in the agreement, being arrangements consistent with this Part.
- (2) Subject to this Part, if the body holding a Class A record does not need it to be readily available for its purposes, the body may

transfer the record to the custody of the Archives in accordance with the agreement.

- (3) Subject to this Part, if the body holding a Class B record does not need it to be readily available for its purposes, the body must:
 - (a) lawfully destroy the record; or
 - (b) transfer the record to the custody of the Archives.
- (4) Subject to this Part, if a Class B record has been in existence for more than 25 years, the body holding it must transfer it to the custody of the Archives as soon as practicable.

6 Section 28 (Archives to have access to records)

6.1 Omit the section, substitute:

28 Archives to have access to records

- (1) Subject to this Part, the Archives is entitled to have access to a Class A record in the possession of the Senate, the House of Representatives or a Parliamentary Department:
 - (a) with the consent, in writing, of the Presiding Officer or the Head of the Department; and
 - (b) at a reasonable time; and
 - (c) in accordance with conditions that the Presiding Officer or the Head of the Department determines in writing.
- (2) Subject to this Part, the Archives is entitled to have access at a reasonable time to a Class B record in the possession of the Senate, the House of Representatives or a Parliamentary Department.

7 Section 29 (Exemption of certain records)

7.1 Subsection 29(1):
Omit the subsection, substitute:

- (1) If:
 - (a) the Senate or the House of Representatives determines by resolution that a Class A record is:

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- (i) a record that is not to be transferred to the custody of the Archives; or
 - (ii) a record to which the Archives is not entitled to have access; or
 - (iii) a record to which the Archives is not entitled to have access unless the conditions that are specified in the resolution or determination are complied with; or
 - (b) the Presiding Officer makes a similar determination in writing, with the agreement of the Director-General, in relation to a Class B record;
the Archives must comply with the resolution or determination.
- (1A) If the Archives seeks access to a Class B record that is not in the custody of the Archives, and a person responsible for the custody of the record considers that it may be appropriate for the Presiding Officer to make a determination in relation to the record, the person must:
- (a) notify the Archives of his or her opinion; and
 - (b) notify the Presiding Officer to allow the Presiding Officer to consider whether a determination should be made.
- (1B) If the person notifies the Archives under subsection (1A), the Archives is not entitled to access to the record until the earlier of:
- (a) the end of a period of 1 month from the day on which the Archives is notified; or
 - (b) the day on which the notification is withdrawn.
- 7.2 Subsection 29(3):
Omit the subsection, substitute:
- (3) The Director-General may make an agreement, in writing, with the Presiding Officer to allow Class A and Class B records that are transferred to the custody of the Archives to be held by the Archives on the conditions specified in the agreement, being conditions consistent with this Part.

8 Section 30 (Commonwealth records to be available to Commonwealth institutions)

- 8.1 Subsection 30(1):
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- Omit ‘all Commonwealth records’, substitute ‘Class A and Class B records’.
- 8.2 Subsection 30(1):
Omit ‘a Commonwealth institution’ (first occurring), substitute ‘the Senate, the House of Representatives, a committee or a Parliamentary Department’.
- 8.3 Subsection 30(1):
Omit ‘that institution or a Commonwealth institution that has succeeded to the relevant functions of that institution’, substitute ‘the body from which it received the records’.
- 8.4 Subsection 30(2):
Omit ‘a Commonwealth institution’, substitute ‘the Senate, the House of Representatives, a committee or a Parliamentary Department’.
- 8.5 Subsection 30(2):
Omit ‘the Commonwealth institution’, substitute ‘the body from which it received the record’.

9 Section 31 (Records in open access period to be publicly available)

- 9.1 Subsection 31(1):
Omit ‘all Commonwealth’, substitute ‘Class B’.
- 9.2 Subsection 31(1):
Omit ‘a Commonwealth institution’, substitute ‘the Senate, the House of Representatives, a committee or a Parliamentary Department’.
- 9.3 Subsection 31(2):
Omit ‘A Commonwealth institution that has the custody of Commonwealth records in the open access period, other than exempt records,’ substitute ‘The Presiding Officer’.
- 9.4 Subsection 31(2):
Omit ‘those records’, substitute ‘Class B records’.
- 9.5 Subsection 31(4):
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Omit ‘Commonwealth’, substitute ‘Class B’.

9.6 Add at the end:

- (5) A Class A record, or a part of the record, may be made available for public access:
- (a) with the permission of:
 - (i) in the case of a record laid before the Senate—the Senate by resolution; or
 - (ii) in any other case—the Presiding Officer; or
 - (b) in accordance with a Parliamentary practice.

10 Section 33 (Exempt records)

10.1 Omit ‘Commonwealth record’ (wherever occurring), substitute ‘Class B record’.

10.2 Paragraph 33(1)(b):
After ‘the Government of the Commonwealth’, insert ‘, to the Senate, to the House of Representatives, to a Parliamentary Department’.

10.3 After subsection 33(1), insert:

- (1A) A Class A record is an exempt record.

11 Section 35 (Identification of exempt records)

11.1 Subsection 35(1):
Omit ‘the responsible Minister or a person authorized by the responsible Minister’, substitute ‘the Presiding Officer’.

11.2 Subsection 35(1):
Omit ‘Commonwealth records’ (first occurring), substitute ‘Class B records’.

11.3 Subsection 35(1):
Omit ‘access in part to Commonwealth records’, substitute ‘access in part to Class B records’.

11.4 Subsection 35(5):

Omit ‘Commonwealth records’, substitute ‘Class B records’.

12 Section 36 (Forms of access)

12.1 Subsection 36(1):

Omit ‘a record’, substitute ‘a Class B record’.

12.2 Paragraph 36(4)(a):

Omit ‘another Commonwealth institution that has the custody of the record’, substitute ‘the Senate, the House of Representatives, a committee or a Parliamentary Department’.

12.3 Paragraph 36(4)(d):

After ‘the Commonwealth,’ insert ‘the Senate, the House of Representatives, a committee, a Parliamentary Department’.

13 Section 37 (Conditions in respect of proper care of records)

13.1 Subsection 37(1):

Omit ‘any record’, substitute ‘a Class B record’.

14 Section 38 (Access to part of exempt record)

14.1 Omit ‘a record’, substitute ‘a Class B record’.

15 Section 39 (Information as to existence of certain documents)

15.1 Subsection 39(1):

Omit ‘a record’, substitute ‘a Class B record’.

15.2 Subsection 39(1):

Omit ‘Commonwealth record’, substitute ‘Class B record’.

15.3. Subsection 39(2):

Omit ‘a record’, substitute ‘a Class B record’.

15.4 Subsection 39(2):

Omit ‘Commonwealth’, substitute ‘Class B’.