



Freedom of Information (Charges) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 March 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Christian Porter
Attorney-General

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Part 1—Preliminary

1 Name

This instrument is the *Freedom of Information (Charges) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2019.	1 April 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Freedom of Information Act 1982*.

4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) agency;
- (b) applicant;
- (c) document;
- (d) document of an agency;
- (e) officer;
- (f) official document of a Minister;
- (g) personal information;
- (h) request.

- (1) In this instrument:

Act means the *Freedom of Information Act 1982*.

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relevant agency, in relation to a request, means the agency to which the request has been made or is taken, under section 16 of the Act, to have been made.

relevant Minister, in relation to a request, means the Minister to whom the request has been made or is taken, under section 16 of the Act, to have been made.

- (2) For the purposes of this instrument, the time spent by an agency or a Minister in searching for or retrieving a document:
 - (a) if the document is not found in the place in which, according to the filing system of the agency, or the office of the Minister, it ought to be located—is the time that would have been spent by the agency or Minister in searching for or retrieving the document if the document had been found in that place; and
 - (b) if the filing system of the agency, or the office of the Minister, ought reasonably to have indicated, but does not indicate, the place in which the document is located—is the time that would have been spent by the agency or Minister in searching for or retrieving the document if that filing system had indicated the place in which the document is located and the document had been found in that place.
- (3) For the purposes of this instrument, time spent by a person in searching for or retrieving a document of a Minister, or in doing a thing related to making a decision on a request for access to a document of a Minister, is taken to be time spent by the Minister in doing that activity.

Part 2—Charges

6 Charges

Subject to this Part, for the purposes of section 94 of the Act:

- (a) the charges set out in Part 1 of Schedule 1 apply in respect of a request for access to a document of an agency or an official document of a Minister;
and
- (b) the charges set out in Part 2 of Schedule 1 apply in respect of the provision of access to a document of an agency or an official document of a Minister.

Note: Since the Act defines *request* as an application made under subsection 15(1) of the Act, paragraph (a) of this section does not apply to an application under section 54 or 54A of the Act (about internal review).

7 Exceptions to charges

No charge if document contains personal information

- (1) There is no charge in respect of a request for, or for the provision of, access to a document that contains personal information of the applicant.

No charge if request not dealt with on time

- (2) There is no charge in respect of a request for access to a document if:
 - (a) the applicant is not notified of a decision on the request within the period referred to in paragraph 15(5)(b) of the Act; and
 - (b) the period has not been extended under subsection 15(6) or (8), section 15AA or subsection 15AB(2) of the Act.
- (3) There is no charge in respect of a request for access to a document if:
 - (a) the period referred to in paragraph 15(5)(b) of the Act is extended under subsection 15(6) or (8), section 15AA or subsection 15AB(2) of the Act; and
 - (b) the applicant is not notified of a decision on the request within the extended period.

8 Decision by agency or Minister that applicant liable to pay charge

If an applicant requests access to a document of an agency or an official document of a Minister, the relevant agency or relevant Minister may make either or both of the following decisions:

- (a) a decision that the applicant is liable to pay a charge in respect of the request for access to the document;
- (b) a decision that the applicant is liable to pay a charge in respect of the provision of access to the document.

Note 1: The relevant agency or relevant Minister must have regard to the objects of the Act in deciding whether to make either or both of the decisions under this section.

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Note 2: If the relevant agency or relevant Minister makes a decision under this section, the relevant agency or relevant Minister must notify the applicant in writing, see section 29 of the Act.

9 Estimate of charge may be fixed in certain circumstances

- (1) This section applies if:
 - (a) an agency or a Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document and the agency or Minister has not taken any or all of the steps necessary to enable the agency or Minister to make a decision on the request; or
 - (b) an agency or a Minister decides that an applicant is liable to pay a charge (other than a charge mentioned in paragraph (c)) in respect of the provision of access to a document and the agency or Minister has not taken any or all of the steps necessary to enable the applicant to be given access to the document; or
 - (c) an agency or a Minister decides that:
 - (i) access to a document is to be given to an applicant under the supervision of an officer of the agency or a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; and
 - (ii) the applicant is liable to pay a charge in respect of the period during which the officer or member of staff supervises that access.
- (2) The agency or Minister may fix the amount that the applicant is liable to pay in respect of a charge.
- (3) The amount of the charge is such amount as would, in the opinion of the agency or Minister, be the amount ascertained in accordance with Schedule 1 if, at the time the agency or Minister decides that the applicant is liable to pay the charge:
 - (a) if paragraph (1)(a) applies—all steps that are necessary to enable a decision to be made on the request had been taken by the agency or Minister; or
 - (b) if paragraph (1)(b) applies—all steps that are necessary to enable the applicant to be given access to the document had been taken by the agency or Minister; or
 - (c) if paragraph (1)(c) applies—the applicant had accessed the document and the period during which the officer or member of staff supervised the applicant was a period determined by the agency or Minister to be the period reasonably required to access the document.
- (4) If an agency or a Minister has fixed an amount in respect of a charge under this section, the applicant is, subject to section 10, liable to pay the charge in the amount so fixed.

10 Adjustment of estimate of charge fixed under section 9

- (1) This section applies if:
 - (a) an amount is fixed under section 9 in respect of a charge; and
 - (b) the amount fixed does not equal the amount (the **actual amount**) that, but for section 9, the applicant would be liable to pay in respect of the charge had that amount been ascertained after:

- (i) a decision had been made on the request; or
 - (ii) all steps necessary to enable the applicant to be given access to the document had been undertaken; or
 - (iii) the applicant has accessed the document.
- (2) If the amount fixed under section 9 in respect of a charge is more than the actual amount that the applicant would be liable to pay in respect of the charge, the agency or Minister must fix, as the amount of the charge, an amount equal to the actual amount.
- (3) If:
- (a) the amount fixed under section 9 in respect of a charge is less than the actual amount that the applicant would be liable to pay in respect of the charge; and
 - (b) the charge is not in respect of a request for access to a document in which a decision refusing to give access to the document has been made by the agency or the Minister;
- the agency or Minister may fix, as the amount of the charge, an amount that is equal to the actual amount in respect of the charge.
- (4) If an agency or a Minister has fixed an amount in respect of a charge under subsection (2) or (3), the applicant is liable to pay the amount so fixed in lieu of the amount fixed under section 9 in respect of the charge.
- (5) If the applicant has paid to an agency or a Minister an amount fixed under section 9 in respect of the charge, then:
- (a) if the amount paid under section 9 in respect of the charge exceeds the amount fixed in respect of the charge under this section—the applicant is entitled to a refund of an amount equal to the amount of the excess; or
 - (b) if the amount paid under section 9 in respect of the charge is less than the amount fixed in respect of the charge under this section—the amount paid by the applicant under section 9 is taken to be a deposit on account of the charge fixed in respect of the charge under this section.

11 Charge to be paid before access to documents is given

- (1) For the purposes of paragraph 11A(1)(b) of the Act, any charge in respect of the request for access to a document or the provision of access to a document is required to be paid before access is given.
- (2) Subsection (1) does not apply to a charge of the kind referred to in item 1 or 2 of the table in clause 2 of Schedule 1 unless the charge is payable in an amount that was fixed under section 9 because of the circumstance referred to in paragraph 9(1)(c).

12 Deposits

- (1) If:
 - (a) an agency or Minister decides that an applicant is liable to pay a charge in respect of:
 - (i) a request for access to a document; or

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- (ii) the provision of access to a document; and
- (b) the agency's or Minister's preliminary assessment of the amount of the charge exceeds \$25;

the agency or Minister may determine that the applicant is required to pay a deposit on account of the charge and the amount of that deposit.

Note: The applicant must be notified of the amount of the deposit, see paragraph 29(1)(e) of the Act.

Amount of deposit

- (2) The amount of the deposit must not exceed:
 - (a) if the preliminary assessment of the amount of the charge exceeds \$25 but does not exceed \$100—\$20; or
 - (b) if the preliminary assessment of the amount of the charge exceeds \$100—25% of the amount of the charge.

Refund of deposit

- (3) The agency or Minister must refund any deposit paid by the applicant on account of the charge if:
 - (a) the agency or Minister decides under section 29 of the Act not to impose the charge; or
 - (b) section 7 applies in respect of the request for access to the document.
- (4) If:
 - (a) the applicant pays a deposit on account of the charge; and
 - (b) the amount of the deposit exceeds the amount of the charge;the agency or Minister must refund the excess.

Part 3—Application, saving and transitional provisions

13 Application and saving provisions

- (1) This instrument applies in relation to a request for access to a document made on or after the commencement of this instrument.
- (2) The *Freedom of Information (Charges) Regulations 1982*, as in force immediately before the commencement of this instrument, continue to apply on and after that commencement in relation to a request for access to a document made before that commencement.

Schedule 1 Charges

Part 1 Charges applicable in respect of a request for access to a document

Clause 1

Schedule 1—Charges

Note: See section 6.

Part 1—Charges applicable in respect of a request for access to a document

1 Charges applicable in respect of a request for access to a document

The following table sets out charges that apply in respect of a request for access to a document of an agency or an official document of a Minister.

Charge applicable in respect of a request for access to a document		
Item	Charge	Amount or rate of charge
1	If the request relates to a document of an agency, or an official document of a Minister, other than a document in relation to which a charge under item 2 of this table applies—a charge in respect of the time spent by the relevant agency or the relevant Minister in searching for, or retrieving, the document	\$15.00 per hour
2	If the request to an agency is in respect of information that is not available in a discrete form in documents of the agency—a charge in respect of the production of a document containing the information in discrete form by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information	an amount not exceeding the actual cost incurred by the relevant agency in producing the document
3	If: (a) the request relates to a document of an agency, or an official document of a Minister, 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; and (b) a written transcript of the words recorded or contained in the document is produced for the purposes of making a decision on the request; a charge in respect of the production of the written transcript	\$4.40 per page of transcript
4	A charge in respect of the time that is spent by the relevant agency or relevant Minister in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions, including time spent: (a) in examining the document; or (b) in consultation with any person or body; or (c) in making a copy with deletions; or (d) in notifying any interim or final decision on the request	\$20 for each hour after the first 5 hours

Part 2—Charges applicable in respect of the provision of access to a document

2 Charges applicable in respect of the provision of access to a document

The following table sets out charges that apply in respect of the provision of access to a document of an agency or an official document of a Minister.

Charges applicable in respect of the provision of access to a document		
Item	Charge	Amount or rate of charge
1	<p>If access to a document of an agency is given:</p> <p>(a) in the form of an opportunity for the applicant to inspect the document under the supervision of an officer; or</p> <p>(b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced—in the form of arrangements for the applicant to hear or view those sounds or visual images under the supervision of an officer;</p> <p>a charge in respect of the period during which the officer supervises that access</p>	<p>The following:</p> <p>(a) if the period is 30 minutes or less—\$6.25;</p> <p>(b) if the period exceeds 30 minutes—\$6.25 for each 30 minutes and any additional period not exceeding 30 minutes included in the period</p>
2	<p>If access to an official document of a Minister is given:</p> <p>(a) in the form of an opportunity for the applicant to inspect the document under the supervision of an officer of an agency or of a person employed as a member of staff of the Minister under section 13 or 20 of the <i>Members of Parliament (Staff) Act 1984</i>; or</p> <p>(b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced—in the form of arrangements for the applicant to hear or view those sounds or visual images under the supervision of an officer of an agency or of a person employed as a member of staff of the Minister under section 13 or 20 of the <i>Members of Parliament (Staff) Act 1984</i>;</p> <p>a charge in respect of the period during which the officer, or the person employed as a member of staff of the Minister, supervises that access</p>	<p>The following:</p> <p>(a) if the period is 30 minutes or less—\$6.25;</p> <p>(b) if the period exceeds 30 minutes—\$6.25 for each 30 minutes and any additional period not exceeding 30 minutes included in the period</p>
3	<p>If:</p> <p>(a) the request relates to a document other than a document that:</p> <p style="padding-left: 20px;">(i) is produced for the purposes of the request by an agency by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or</p> <p style="padding-left: 20px;">(ii) is produced for the purposes of the request by an agency by the making of a transcript from a document held in the agency, being a document by which words are recorded in a manner in which they are capable of</p>	<p>The following:</p> <p>(a) for a copy (other than a photocopy)—\$4.40 per page;</p> <p>(b) for a photocopy—10 cents per page</p>

Schedule 1 Charges

Part 2 Charges applicable in respect of the provision of access to a document

Clause 2

Charges applicable in respect of the provision of access to a document

Item	Charge	Amount or rate of charge
	being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form; or (iii) is an article or thing from which sounds or visual images are capable of being produced; and (b) access to the document is given in the form of the provision of a copy of the document; a charge in respect of the number of pages of the copy provided to the applicant	
4	If: (a) the request made to an agency is in respect of information that is available in discrete form in a document produced (whether for the purposes of the request or not) by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; and (b) deletions are made from the document before access to it is given to the applicant; and (c) it is not reasonably practicable to make those deletions otherwise than by the use of a computer or other equipment referred to in paragraph (a); a charge in respect of the production by the computer or other equipment of a copy of the document with those deletions	an amount not exceeding the actual costs incurred by the relevant agency in producing a copy of the document
5	A charge for the production by an agency of a copy of a document in the form of a computer tape or a computer disk	an amount not exceeding the actual costs incurred by the relevant agency in producing a copy of the document
6	If: (a) the request relates to a document that is an article or thing from which sounds or visual images are capable of being produced; and (b) access to the document is given in the form of arrangements for the applicant to hear or view those sounds or visual images; a charge in respect of the arrangements made other than any arrangements in respect of which a charge is applicable under item 1 or 2 of this table	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister in respect of the arrangements
7	If: (a) the request relates to a document that is an article or thing from which sounds or visual images are capable of being produced; and (b) access is given in the form of the provision of a copy of the document; a charge in respect of the production of the copy	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister in producing the copy
8	If: (a) the request relates to a document by which words are recorded in a manner in which they are capable of being	\$4.40 per page of transcript

Charges applicable in respect of the provision of access to a document

Item	Charge	Amount or rate of charge
	reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form; and (b) access is given in the form of the provision of a written transcript (with or without deletions) of the words recorded or contained in the document; and (c) the applicant has not paid, or is not liable to pay, as a charge in respect of the request for access to the document, a charge in respect of the production of such a written transcript; a charge in respect of the production of the written transcript	
9	If: (a) access to the document to which the request relates is to be given in the form of the provision of a copy of the document; and (b) the copy is, at the applicant's request, to be sent by post or delivered to the applicant; a charge in respect of the postage or delivery of the copy	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister for the postage or delivery of the copy

Schedule 2—Repeals

Freedom of Information (Charges) Regulations 1982

1 The whole of the instrument

Repeal the instrument.