

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

*(As read a first time)*

**ARCHIVES BILL 1981**

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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(Presented pursuant to leave granted and read 1<sup>o</sup>, 2 April 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

**No. 64**

**A BILL**

**FOR**

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

5 BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Archives Act* 1981.

10 **Commencement**

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

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

15 “Archives” means the Australian Archives established by this Act;

“authority of the Commonwealth” means—

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

20 (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;

- (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 prescribed company or association over which the Commonwealth is in a position to exercise control, 5  
but does not include a court;
- “Chairman” means the Chairman of the Council;
- “Commonwealth institution” means—
- (a) a body, other than a State, established by or in accordance with the Constitution, including the Senate, the House of Representatives and the High Court; 10
  - (b) a Department;
  - (c) a Federal court or a court of a Territory;
  - (d) an authority of the Commonwealth; or
  - (e) the Administration of a Territory other than the Northern Territory; 15
- “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 sub-section (6) or by virtue of section 23, 20  
but does not include a record that is exempt material or a register or guide maintained in accordance with Part VIII;
- “Council” means the Advisory Council on Australian Archives established by this Act; 25
- “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;
- “Department” means a Department of the Australian Public Service; 30
- “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 Australian Archives under the *Public Service Act 1922*;
- “exempt material” means— 35
- (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 sub-section (6) applies;
  - (b) material included in the collection of library material maintained by the National Library of Australia; 40

- (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
- 5 (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 26;

10 “material” means records and other objects;

“material of the Archives” means—

- (a) records in the custody of the Archives (other than current Commonwealth records relating to the administration of the Archives); or
- 15 (b) an object, other than a record, that forms part of the archival resources relating to Australia and is in the custody of the Archives,

and includes material kept in the custody of a person in accordance with arrangements made under section 54;

20 “object” does not include a building or other structure or a vessel, aircraft or vehicle, other than a prescribed vessel, aircraft or vehicle;

“Parliamentary Department” means the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff or the Joint House Department;

25

“person” includes a Commonwealth institution or an organization;

“record” means a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is, or has been, kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing;

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

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“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;

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“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 a Commonwealth institution; 5
- (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
- (e) an international or other organization the membership of which includes, or has included, the Commonwealth or a Commonwealth institution, 10

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; 15
- (g) material, 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 or the Northern Territory under a law or agreement, 20
 that relates only or principally to the history or government of a State or the Northern Territory or of a Colony that became part of the Commonwealth or the Northern Territory;
- (h) material, other than Commonwealth records, relating only to a place that has been, but has ceased to be, a Territory; or 25
- (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 Cadet Corps; 30
- (c) the Naval Reserve Cadets; and
- (d) the Air Training Corps.

(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. 35

(6) The regulations may make provision under which, in prescribed 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 all or any of the purposes of this Act. 40

(7) For the purposes of this Act, a record is in the open access period if a period of 30 years has elapsed since the end of the year ending on 31 December in which the record came into existence.

**Extension to Territories**

4. This Act extends to every external Territory.

**PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF  
THE AUSTRALIAN ARCHIVES**

5 **Establishment and functions of Australian Archives**

5. (1) There shall be, within the Department administered by the Minister, an organization by the name of the Australian Archives.

(2) The functions of the Australian Archives are, subject to this Act—

- 10 (a) to ensure the conservation and preservation of the existing and future archival resources of the Commonwealth;
- (b) to encourage and foster the preservation of all other archival resources relating to Australia;
- 15 (c) to promote the keeping 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 by providing advice and other assistance to Commonwealth institutions;
- (d) to ascertain the material that constitutes the archival resources of the Commonwealth;
- 20 (e) to have the custody and management of Commonwealth records, other than current Commonwealth records, that—
  - (i) are part of the archival resources of the Commonwealth;
  - (ii) ought to be examined to ascertain whether they are part of those archival resources; or
  - 25 (iii) although they are not part of those archival resources, are required to be permanently or temporarily preserved;
- (f) to seek to obtain, and to have the custody 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 custody of the Archives;
- 30 (g) with the approval of the Minister, to accept and have the custody and management of material that, though not part of the 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 custody of the Archives in order to ensure its preservation or for any other reason;
- 35 (h) to encourage, facilitate, publicise and sponsor the use of archival material;
- (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;
- 40 (k) to conduct research, and provide advice, in relation to the management and preservation of records and other archival material;

- (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 exempt material as if that material formed part of the archival resources of the Commonwealth. 5

(3) Nothing in this Part derogates from the powers and functions of the Public Service Board or any other Commonwealth institution in relation to the keeping of current Commonwealth records. 10

### **Powers of Archives**

6. (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 or other person, control repositories or other facilities in which material of the Archives is housed or exhibited; 15
- (b) undertake the survey, appraisal, accessioning, arrangement, description and indexing of Commonwealth records; 20
- (c) make arrangements for the acquisition by the Commonwealth of, or of copyright in relation to, or arrangements relating to 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; 25
- (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; 30
- (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; 35
- (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; 40



- (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.

5       (2) Where, in the performance of its functions, the Archives enters into arrangements to accept the custody 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  
10       Division 3 of Part V.

### PART III—THE DIRECTOR-GENERAL AND STAFF OF THE ARCHIVES

#### Director-General

15       7. (1) There shall be a Director-General of the Australian Archives, who shall hold office under the *Public Service Act* 1922.

(2) The Director-General, in addition to exercising powers or performing duties expressly conferred or imposed on him 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.

20       (3) The Minister may give directions, not inconsistent with this Act, to the Director-General in relation to the exercise of his powers, and the performance of his duties, under this Act.

#### Delegation by Director-General

25       8. (1) The Director-General may, either generally or as otherwise provided by the instrument of delegation, by writing under his hand, delegate to a person any of his 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.

30       (3) A delegation under this section does not prevent the exercise of a power by the Director-General.

#### Staff

9. The staff of the Archives shall be persons appointed or employed under the *Public Service Act* 1922.

### PART IV—THE ADVISORY COUNCIL ON AUSTRALIAN ARCHIVES

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#### Advisory Council on Australian Archives

10. (1) There is established by this Act a Council by the name of the Advisory Council on Australian Archives.

(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 choice. 5

(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 appointment. 10

(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.

#### **Functions of Council** 15

11. (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 sub-section (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. 20

#### **Chairman and Deputy Chairman of Council**

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

#### **Deputies of members** 25

13. (1) A member chosen by the Senate or by the House of Representatives may appoint a Senator or a member of that House, as the case may be, to be his deputy.

(2) The Minister may appoint a person to be a deputy of a member referred to in paragraph 10 (2) (c). 30

(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.

#### **Remuneration and allowances of members**

14. (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 shall be paid such remuneration as is prescribed. 35

(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.

5 (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 reasonably incurs by reason of his attendance at meetings of the Council or of his engagement, with the approval of the Council, on the affairs of the Council.

(4) This section has effect subject to the *Remuneration Tribunals Act 1973*.

#### **Termination of office of member**

10 15. (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.

15 (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 shall cease to be a member of the Council or a deputy of such a member.

20 (5) For the purposes of sub-section (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 continues to be entitled to the Parliamentary allowances that became payable to him as such a member.

#### **Resignation of member**

25 16. (1) A member appointed by the Minister may resign his office by writing signed by him and delivered to the Minister.

(2) A member chosen by the Senate may resign his office by writing signed by him and delivered to the President of the Senate.

30 (3) A member chosen by the House of Representatives may resign his office by writing signed by him and delivered to the Speaker of the House of Representatives.

#### **Meetings of the Council**

17. (1) The Council shall hold such meetings as are necessary for the performance of its functions.

35 (2) The Chairman may at any time convene a meeting of the Council.

(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, 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 is present. 5

(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. 10

(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. 15

(11) In sub-sections (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 office, be read as a reference to the Deputy Chairman.

## **PART V—COMMONWEALTH RECORDS**

### ***Division 1—Preliminary*** 20

#### **Non-applications to certain records**

18. (1) Subject to section 21, Divisions 2 and 3 do not apply to—

- (a) records of the Governor-General or of a former Governor-General;
- (b) records in the possession of the Senate, the House of Representatives or a Parliamentary Department; or 25
- (c) records in the possession of a court or the registry of a court.

(2) For the purposes of this Act, a certificate signed by the Official Secretary to the Governor-General, or a person performing the duties of the Official Secretary, certifying that a record is one of a kind referred to in paragraph

(1) (a) establishes conclusively that it is such a record. 30

#### **Cabinet records**

19. (1) Subject to section 21, Divisions 2 and 3 do not apply to—

- (a) a record that has been submitted to the Cabinet for its consideration or is or was proposed by a Minister to be so submitted;
- (b) an official record of the Cabinet; 35
- (c) a copy of, or of a part of, a record referred to in paragraph (a) or (b); or
- (d) a record the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a record is one of a kind referred to in sub-section (1) establishes conclusively that it is such a record.

5 (3) Where a record is a record referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the record, a certificate under sub-section (2) in respect of the record shall identify that part or those parts of the record as containing the matter by reason of which the certificate is given.

10 (4) Sub-section (1) does not apply in relation to a record by reason of the fact that it was submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted, if it was not brought into existence for the purpose of submission for consideration by the Cabinet.

15 (5) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.

**Executive Council records**

20. (1) Subject to section 21, Divisions 2 and 3 do not apply to—

- (a) a record that has been submitted to the Executive Council for its consideration or is or was proposed by a Minister to be so submitted;
- 20 (b) an official record of the Executive Council;
- (c) a copy of, or of a part of, a record referred to in paragraph (a) or (b); or
- (d) a record the disclosure of which would involve the disclosure of any deliberation or advice of the Executive Council, other than a record by which an act of the Governor-General, acting with the advice of the  
25 Executive Council, was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a record is one of a kind referred to in sub-section (1) establishes conclusively that it is such a record.

30 (3) Where a record is a record referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the record, a certificate under sub-section (2) in respect of the record shall identify that part or those parts of the record as containing the matter by reason of which the certificate is given.

35 (4) Sub-section (1) does not apply in relation to a record by reason of the fact that it was submitted to the Executive Council for its consideration, or is or was proposed by a Minister to be so submitted, if it was not brought into existence for the purpose of submission for consideration by the Executive Council.

### **Regulations and arrangements relating to certain exempt records**

**21. (1)** The regulations may provide that all or any of the provisions of Division 2 or Division 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 sections 18, 19 and 20, and may provide that those provisions are so to apply subject to such modifications as are prescribed. 5

**(2)** Subject to any regulations made in accordance with sub-section (1), a person having the control of the custody of any records referred to in that sub-section may enter into arrangements with the Archives providing—

- (a)** for the Archives to have or retain the custody of those records; and 10
- (b)** for the extent (if any) to which the Archives or other persons are to have access to those records.

### **Archives may be given custody of exempt Commonwealth records**

**22. (1)** A person having the control of the custody of any records referred to in section 18, 19, or 20 may enter into arrangements with the Archives for the Archives to have or retain the custody of those records. 15

**(2)** Arrangements referred to in sub-section (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.

### **Records of Royal Commissions** 20

**23. (1)** This section applies to the records kept by a Royal Commission, whether the inquiry was commenced or was completed before or after the commencement of this Part.

**(2)** The Commonwealth is entitled to the possession of the records kept by a Royal Commission 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. 25

**(3)** Records referred to in sub-section (2) shall be kept in such custody as the responsible Minister directs and the Archives is not entitled to the custody of any such records except in accordance with such a direction. 30

**(4)** A direction given by a Royal Commission 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 open to public access in accordance with this Act. 35

**(5)** For the purposes of this Act, the Minister administering the *Royal Commissions Act* 1902 shall be deemed to be the responsible Minister in relation to the records of a Royal Commission.

**(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 the commission issued by the Governor-General, sub-sections (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. 40

**Records to which secrecy provisions of enactments apply**

24. The regulations may provide that all or any of the provisions of Divisions 2 and 3 do not apply, or apply only to a specified extent, to or in relation to a record to which a prescribed provision of a law of the Commonwealth or of a Territory, being a provision prohibiting or restricting disclosure of the record or of information or matter contained in the record, applies.

**Records of inter-governmental authorities**

25. 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, or to the operations of, 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 Northern Territory or another country; or
- (b) for the purpose of an agreement between the Commonwealth and any State or States, the Northern Territory or another country.

***Division 2—Dealings with Commonwealth Records*****Disposal, destruction, &c., of Commonwealth records**

26. (1) Subject to this Part, a person shall not—

- (a) destroy or otherwise dispose of;
  - (b) transfer, or be a party to arrangements for the transfer of, the custody of;
  - (c) transfer, or be a party to arrangements for the transfer of, the ownership of; or
  - (d) damage or alter,
- a Commonwealth record.

Penalty: \$200.

(2) Sub-section (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) Sub-section (1) does not apply to the destruction of a Commonwealth record, being a record to which sub-section 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 Australian 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 received into the custody of the Archives from, 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

(5) For the purposes of the application of sub-section (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. 10  
15

#### **Alteration of Commonwealth records**

27. (1) Where a Commonwealth record has been in existence for more than 25 years, a person shall not add to, or otherwise alter, the record without the approval of the Archives.

Penalty: \$200. 20

(2) Sub-section (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 practice or procedure approved by the Archives.

#### **Transfer of Commonwealth records to Archives** 25

28. (1) Subject to this Division, when a Commonwealth record in the possession of a Commonwealth institution other than the Archives has ceased (whether before or after the commencement of this Part) to be required to be readily available for the purpose of a Commonwealth institution, the person responsible for the custody of the record shall, unless the record is lawfully destroyed, cause it to be transferred to the custody of the Archives in accordance with arrangements approved by the Archives. 30

(2) Subject to this Division, where a Commonwealth record in the possession of a Commonwealth institution other than the Archives has been in existence as a Commonwealth record for 25 years, the Commonwealth institution shall, as soon as it is practicable to do so, cause the record to be transferred to the custody of the Archives in accordance with arrangements approved by the Archives. 35

#### **Archives to have access to records**

29. Subject to this Division, 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. 40



**Exemption of certain records**

5       **30. (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 custody of the Archives under section 28; or

10       (b) a record to which the Archives is not to be entitled to have access under section 29 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.

15       **(2)** Notwithstanding sub-section (1), the responsible Minister may determine that a Commonwealth record, or each record in a class of Commonwealth records, is—

20       (a) a record that is not required to be transferred to the custody of the Archives under section 28; or

      (b) a record to which the Archives is not to be entitled to have access under section 29 or is not to be entitled to have access under that section otherwise than on specified conditions to be observed by the Archives,

25       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.

30       **(3)** The Archives may agree with a Commonwealth institution that records accepted into the custody of the Archives are to be held on certain conditions to be observed by the Archives, not being conditions inconsistent with Division 3.

**(4)** Where—

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

35       (b) a person responsible for the custody of the record considers that it might be appropriate for a determination to be made under sub-section (2) applying paragraph (2) (b) to the record,

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

40       **(5)** Where a notification under sub-section (4) has been given in respect of a record, the Archives is not entitled to have 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 sub-section ceases to have effect in relation to the record.

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(6) A record that is in the open access period is not, by virtue of a determination under sub-section (1), a record to which paragraph (1) (b) applies unless there is in force a certificate of a Minister under section 34 in respect of the record.

(7) A record that is in the open access period is not, by virtue of a determination under sub-section (2), a record to which paragraph (2) (b) applies unless there is in force a certificate of a Minister under section 34 in respect of the record. 5

(8) The concurrence of the Director-General is not required for the making of a determination under sub-section (1) by, or by a person having authority to act on behalf of, any of the following Commonwealth institutions, namely: 10

- (a) the Australian Security Intelligence Organization;
- (b) the Australian Secret Intelligence Service;
- (c) the Defence Signals Directorate;
- (d) the Joint Intelligence Organization; and 15
- (e) the Office of National Assessments.

### **Commonwealth records to be available to Commonwealth institutions**

31 (1) The Archives shall ensure that all Commonwealth records received into its custody from a Commonwealth institution are made available, as reasonably required, for use by, or at the direction of, that institution, or a Commonwealth institution that has succeeded to the relevant functions of that institution. 20

(2) Where a record that has been in existence for more than 25 years is made available to a Commonwealth institution under sub-section (1), the record shall not be made available in a manner that involves its leaving the custody of the Archives except as necessary for the proper conduct of the business of the Commonwealth institution. 25

### ***Division 3—Access to Commonwealth Records***

#### **Records in open access period to be publicly available**

32. (1) Subject to this Part, the Archives shall cause all Commonwealth records in the open access period that are in the custody of the Archives or of a Commonwealth institution, other than exempt records, to be made available for public access. 30

(2) 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. 35

#### **Exempt records**

33. (1) For the purposes of this Division, a Commonwealth record is an exempt record if it contains information or matter of any of the following kinds: 40

- (a) information or matter the disclosure of which under this Division could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth;

- 5 (b) information or matter communicated in confidence by or on behalf of the Government of another country, or of a State or the Northern Territory, to the Government of the Commonwealth or a person receiving the communication on behalf of that Government, the disclosure of which under this Division would constitute a breach of that confidence;
- (c) information or matter the disclosure of which under this Division could reasonably be expected to cause damage to relations between the Commonwealth and any State or the Northern Territory;
- 10 (d) information or matter the disclosure of which under this Division would have a substantial adverse effect on the financial or property interests of the Commonwealth or of a Commonwealth institution;
- (e) information or matter the disclosure of which under this Division would, or could reasonably be expected to, have a substantial adverse effect on the interests of the Commonwealth or of a Commonwealth institution in or in relation to pending or likely legal proceedings;
- 15 (f) information or matter the disclosure of which under this Division would constitute a breach of confidence;
- (g) information or matter the disclosure of which under this Division would, or could reasonably be expected to—
- 20 (i) prejudice the conduct of an investigation of an offence, or possible offence, against 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;
- 25 (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
- 30 (iii) endanger the lives or physical safety of persons engaged in or in connection with law enforcement;
- (h) information or matter the disclosure of which under this Division would, or could reasonably be expected to—
- (i) prejudice the carrying on generally of investigations concerning breaches or evasions of the law;
- 35 (ii) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (iii) 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
- 40 (iv) prejudice the maintenance or enforcement of lawful methods for the protection of public safety;
- (j) information or matter the disclosure of which under this Division would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person);
- 45

- (k) 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;
- (m) information or matter (other than information or matter referred to in paragraph (k)) concerning a person in respect of his 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, affect that person adversely in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs. 5  
10

(2) For the purposes of this Division, a Commonwealth record is an exempt record if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege. 15

(3) In paragraphs (1) (g) and (h), "law" means law of the Commonwealth or of a State or Territory.

(4) 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 Northern Territory or a local government authority. 20

**Certificates by Ministers as to certain exempt records**

34. (1) Where a Minister is satisfied that a record contains information or matter of a kind referred to in paragraph 33 (1) (a), (b) or (c), whether or not the record has been examined in accordance with section 35 and whether or not a decision has been given in respect of the record under that section, he may sign a certificate to that effect and such a certificate, so long as it remains in force, establishes conclusively that the record is an exempt record referred to in the relevant paragraph of sub-section 33 (1). 25

(2) Where a Minister is satisfied as mentioned in sub-section (1) by reason only of information or matter contained in a particular part or particular parts of a record, the certificate under that sub-section in respect of the record shall identify that part or those parts of the record as containing the information or matter by reason of which the certificate is given. 30

(3) The regulations may prescribe a period as the period during which certificates under sub-section (1), or any class of such certificates, remain in force unless sooner revoked. 35

(4) Regulations made in pursuance of sub-section (3) may be expressed to apply to certificates signed before the day on which the regulations take effect, but a certificate that is in force at the time when any such regulations take effect does not, by reason of the regulations, cease to be in force before the expiration of a period of 1 year from the date on which the regulations take effect. 40

(5) Notwithstanding sub-section (3) and any regulations under that sub-section, where a certificate under this section has been signed in respect of a

record, a further certificate under this section in respect of the record may be signed at any time, whether or not the first-mentioned certificate is still in force.

5 (6) Where a certificate under this section is in force in respect of a record, the record is not subject to examination under section 35.

(7) A Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate his powers under this section, other than this power of delegation, to—

- 10 (a) the Permanent Head of a Department of the Australian Public Service;
- (b) the person holding an office the holder of which has, in relation to a branch of the Australian Public Service, all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922*;
- 15 (c) the holder of an office that is a prescribed office, or is included in a class of offices that is a prescribed class of offices, for the purposes of this sub-section; or
- (d) a person performing the duties of an office referred to in paragraph (a), (b) or (c).

20 (8) A power delegated by a Minister under sub-section (7), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(9) A delegation by a Minister under sub-section (7) does not prevent the exercise of a power by the Minister.

#### Identification of exempt records

25 35. (1) The Director-General, in consultation with the responsible Minister or a person authorized by him, 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  
30 reason of which the records are exempt records.

(2) Except in the case of records exempted from transfer to the custody of Archives by virtue of a determination under section 30, an examination of records for the purposes of sub-section (1) shall be conducted on premises of the Archives.

35 (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.

40 (4) Determinations under sub-section (1) in respect of records identified as exempt records shall be reviewed, in accordance with arrangements made as referred to in that sub-section, at such intervals as the Director-General thinks

appropriate having regard to the nature of records concerned and any other relevant circumstances and whenever necessary for the purposes of reconsideration of a decision in accordance with section 41.

(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 Administrative Appeals Tribunal on a review under this Act. 5

### Forms of access

36. (1) Where the Archives is required by this Division to cause a record to be made available for public access, any person is, subject to this Division, entitled to access to the record. 10

(2) Access to a record may be given to a person in one or more of the following forms:

(a) an opportunity to inspect the record; 15

(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; 20

(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. 25

(3) Subject to sub-section (4), where a person has applied for access in a particular form, access shall be given in that form. 30

(4) Where—

(a) the giving of access under this Division to a record in a particular form would interfere unreasonably with the operations of the Archives or of another Commonwealth institution that has the custody of the record;

(b) the giving of access under this Division to a record in a particular form would not, having regard to the physical nature of the record, be appropriate; 35

(c) the giving of access under this Division to a record in a particular form would be detrimental to the preservation of the record; or

(d) the giving of access under this Division to a record in a particular form would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth) subsisting in matter contained in the record, being matter that does not relate to the affairs of a Commonwealth institution, 40

access in that form may be refused and access given in another form. 45

**Conditions in respect of proper care of records**

5 37. (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 sub-section (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.

**10 Access to part of exempt record**

15 38. Where a record that would otherwise be required to be made available for public access under this Division is an exempt record, the Archives may, where it is 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 Division.

**Information as to existence of certain documents**

20 39. (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) or (g).

25 (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 sub-section (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, the decision to give the notice shall, for the purposes of section 42, be deemed to be a decision of the Archives  
30 refusing to grant to the applicant access to the record on the ground that the record is an exempt record.

**Notification of decisions**

35 40. (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 32, being an application—

- (a) in writing;
- (b) expressed to be made in accordance with this section; and
- (c) providing such particulars, if any, concerning the record to which it relates as are contained in the Australian National Guide to Archival  
40 Material.

(2) The Archives shall give all reasonable assistance to persons to enable them to make applications complying with paragraph (1) (c).

(3) Where an application to which this section applies is made, the Archives shall take all reasonable steps to notify the applicant 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 sub-section (3) is to have effect as if a specified shorter period were substituted for the period of 90 days specified in that sub-section, and a provision so made has effect in relation to applications received by the Archives while the provision is in force. 5

(5) A notification of a decision in accordance with sub-section (3) that is adverse to the applicant shall give to the applicant appropriate information concerning his rights with respect to review of the decision and the procedure for the exercise of those rights, including particulars of the manner in which an application for reconsideration under section 41 may be made. 10

(6) Where—

(a) an application to which this section applies has been made; 15

(b) the period of 90 days, or such other period as is applicable in accordance with regulations under sub-section (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, 20

the Archives shall, for the purpose of enabling an application to be made to the Tribunal under section 42, 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.

(7) 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 sub-section (6) ), an application to the Tribunal under section 42 of this Act by virtue of that sub-section 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. 25 30

(8) Where such a complaint is made before the expiration of the period referred to in sub-section (6), the Ombudsman, after having investigated the complaint, may, if he 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 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 42, 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. 35 40

(9) Where, after an application has been made to the Tribunal by virtue of sub-section (6) 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 Division.

- 5 (10) Before dealing further with an application made by virtue of subsection (6), the Tribunal may, on the application of the Director-General, allow further time to the Archives to deal with the application for access.

### **Internal reconsideration of decisions**

- 10 41. (1) Where a person has made an application to which section 40 applies and is dissatisfied with the decision on the application, he may, within 28 days after the day on which notice of the decision was given to him 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—

- 15 (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).

- 20 (3) Where the decision on the reconsideration does not grant access as sought by the applicant, the notice referred to in paragraph (2) (b) 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; and  
 25 (b) give to the applicant appropriate information concerning his right to apply to the Tribunal for a review of the decision.

(4) The Archives is not required to include in a notice under this section any matter that is of such a nature that its inclusion in a Commonwealth record would cause that record to be an exempt record.

- 30 (5) 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 to deal with such applications.

### **Applications to Administrative Appeals Tribunal**

- 35 42. (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 this Division does not apply;  
 40 (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 in a particular form by reason of paragraph 36 (2) (a), (b) or (d); or 5
- (d) a decision refusing to allow a further period for making an application under sub-section 41 (1) for a reconsideration of a decision.

(2) Subject to sub-section (3) where, in relation to a decision referred to in sub-section (1), a person is or has been entitled to apply under section 41 for a reconsideration of the decision, that person is not entitled to make an application under sub-section (1) in relation to that decision, but may make such an application in respect of the decision made on such a reconsideration. 10

(3) Sub-section (2) does not prevent an application to the Tribunal in respect of a decision where—

- (a) the person concerned has applied under section 41 for a reconsideration of the decision; 15
- (b) a period of 14 days has elapsed since the day on which he made that application; and
- (c) he 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 sub-section (4) if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal. 20

(4) Notwithstanding section 29 of the *Administrative Appeals Tribunal Act* 1975, the period within which (subject to any extension granted by the Tribunal) an application under sub-section (1) of this section is to be made in respect of a decision is— 25

- (a) except where paragraph (b) 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; or 30
- (b) where the decision is a decision that is to be deemed by sub-section 40 (6) or (8) to have been made—the period commencing on the day on which the decision is to be deemed to have been made 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 41 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. 35

(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 in compliance with sub-section 41 (3) has been given to the applicant. 40

**Proceedings before Tribunal**

5 **43. (1)** For the purposes of the application of the *Administrative Appeals Tribunal Act 1975* to a review of a decision in pursuance of an application to the Tribunal under section 42, the Director-General shall be deemed to be the person who made the decision.

(2) In proceedings before the Tribunal in pursuance of an application under section 42—

10 (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.

15 (3) Where, under a provision of this Part, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a record is one of a kind referred to in that provision, the powers of the Tribunal do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate.

20 (4) Where, in proceedings before the Tribunal in pursuance of an application under section 42, it is established that a record is an exempt record, the Tribunal does not, except as provided by sub-section (5), have power to decide that access is to be granted to the record.

25 (5) On a review in pursuance of an application to the Tribunal under section 42, 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.

30 (6) In proceedings before the Tribunal in pursuance of an application under section 42, the Tribunal shall make such order or orders under sub-section 35 (2) of the *Administrative Appeals Tribunal Act 1975* as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of—

(a) matter contained in a record to which the proceedings relate by reason of which the record is an exempt record; or

(b) information of the kind referred to in sub-section 39 (1) of this Act.

35 (7) Notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*—

(a) the Tribunal shall not, in its reasons for a decision in a matter arising under this Act, include any matter or information of a kind referred to in sub-section (6); and

40 (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his 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 sub-section (6).

(8) In proceedings before the Tribunal in pursuance of an application under section 42, evidence of a certificate under section 18, 19, 20 or 34, including evidence of the identity or nature of the record to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the record to which it relates.

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#### **Production of documents to Tribunal**

44. (1) Section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a document that is claimed to be an exempt record but, in proceedings before the Tribunal in relation to such a document, if the Tribunal is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt record, it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt record, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

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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 any person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the record or disclosing the contents of the record to any such person.

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(3) Notwithstanding sub-sections (1) and (2) but subject to sub-section (4), the Tribunal is not empowered, in any proceedings, to require the production of a record in respect of which there is in force a certificate under section 18, 19, 20 or 34.

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(4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the record concerned in the manner provided in sub-section 19 (3), 20 (3) or 34 (2), sub-section (3) does not prevent the Tribunal from requiring the production, in proceedings before the Tribunal under this Act in relation to the record, of a copy of so much of the record as is not included in the part or parts so identified.

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(5) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section 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

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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 duties as a member of that staff.

### Complaints to Ombudsman

5       **45. (1)** Notwithstanding anything contained in this Act or in sub-section  
6 (3) of the *Ombudsman Act* 1976 but subject to sub-section 6 (2) of that Act,  
the exercise of the powers of the Ombudsman under the *Ombudsman Act* 1976  
in respect of matters arising under this Act is not precluded or restricted by  
10 reason of the rights conferred on persons by this Act to make applications to  
the Tribunal.

(2) 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  
15 section 12 of the *Ombudsman Act* 1976.

(3) 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 sub-  
section 39 (1) of this Act.

### 20 Arrangements for accelerated or special access

**46. (1)** The Minister or a person authorized by him may, in accordance  
with arrangements approved by the Prime Minister, cause all records in a class  
of Commonwealth records not in the open access period to be available for  
public access.

25       **(2)** The Minister or a person authorized by him may, in accordance with  
arrangements approved by the Prime Minister, cause Commonwealth records  
that are not available for public access under this Act to be made available  
to a person for a purpose specified in the regulations as a purpose for which  
access may be given under this sub-section.

30       **(3)** Where records made available to a person by virtue of sub-section (2)  
are so made available on conditions to be observed by that person, that person  
shall not contravene those conditions.

Penalty: \$200.

### Protection against certain actions

35       **47. (1)** Where, in the ordinary course of the administration of this Act,  
access is given by the Archives to a record as being a record required by this  
Division to be made available for public access—

40       (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 5
- (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.

(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. 10

#### **Access to records apart from Act**

48. 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 can properly do so or is required by law to do so. 15

#### **Security classifications**

49. Where a record has become available for public access in accordance with this Division, any security classification applicable to the record ceases to have effect for any purpose. 20

#### **Transitional provisions relating to access**

50. For the purposes of this Division, 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. 25

### **PART VI—OBJECTS OF ARCHIVAL SIGNIFICANCE 30**

#### **Declaration of objects of archival significance**

51. (1) Where it appears to the Minister that a particular object that is the property of the Commonwealth or of a Commonwealth institution and is in the possession of a Commonwealth institution is, or that such objects of a particular description as are the property of the Commonwealth or of a Commonwealth institution and are in the possession of a Commonwealth institution are, part of the archival resources of the Commonwealth, he may, by notice in the *Gazette*, declare the object, or every such object, to be an object to which this section applies. 35

(2) If an object to which this section applies has ceased (whether before or after the commencement of this Part) to be required to be readily available for the purposes of a Commonwealth institution, the person responsible for the 40

custody of the object shall, if the Archives so requires, cause it to be transferred to the custody of the Archives in accordance with arrangements approved by the Archives.

5 (3) A person shall not destroy or otherwise dispose of or damage any object to which this section applies without the permission of the Archives.

Penalty: \$200.

### Samples of material for Archives

10 52. (1) The Minister may, by notice published in the *Gazette*, declare that a specified class of objects, not being objects referred to in sub-section (3), (4) or (5), is a class to which sub-section (2) applies.

(2) The Archives may require any Commonwealth institution to cause to be delivered to the custody of the Archives samples of objects included in a class of objects to which this sub-section applies that are the property of the Commonwealth or of the Commonwealth institution.

15 (3) The Reserve Bank of Australia shall cause to be delivered to the custody 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.

20 (4) The Controller of the Royal Australian Mint shall cause to be delivered to the custody of the Archives such samples as the Archives requires of current coins caused by the Treasurer to be made.

(5) The Australian Postal Commission shall cause to be delivered to the custody of the Archives such samples of current postage stamps issued by the Commission as the Archives requires.

## 25 PART VII—CARE OF MATERIAL OF THE ARCHIVES

### Location of material of the Archives

53. (1) Subject to this Part, material of the Archives shall be kept at such places as the Director-General considers appropriate.

30 (2) In considering the place 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
- 35 (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.

**Custody of material of the Archives other than by Archives**

**54. (1)** Subject to any other law of the Commonwealth and to the rights of Commonwealth institutions, where the Director-General considers it appropriate to do so, the Archives may make arrangements with a person for material of the Archives to be kept in the custody of that person. 5

**(2)** Arrangements referred to in sub-section (1) shall provide for the care of the material of the Archives to which they relate and for the regular inspection of that material by the Archives.

**(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. 10

**PART VIII—REGISTERS AND GUIDE RELATING TO ARCHIVES****Australian National Register of Records 15**

**55. (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— 20

(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. 25

**(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.

**Australian National Guide to Archival Material**

**56 (1)** The Archives shall maintain a guide to be known as the Australian National Guide to Archival Material. 30

**(2)** Subject to sub-section (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 sub-section 35 (1), other than—

(a) records with respect to the whole of which a certificate under section 34 is in force; and 35

(b) parts of records identified in accordance with sub-section 34 (2) in a certificate under section 34.



(3) Subject to sub-section (4), the Guide may also contain copies of particulars contained in the Australian National Register of Records.

(4) The Guide shall not include—

- 5 (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.

10 (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 any prescribed charge, to receive a copy of an entry in the Guide.

#### **Australian National Register of Research Involving Archives**

15 57. (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 that has been, conducted in or in relation to Australia that has involved, or will involve, the use of archival material.

20 (2) For the purposes of sub-section (1), the Archives shall seek the co-operation of all persons and organizations interested in research of the kind referred to in that sub-section, including the authorities of the States responsible for State archives and the universities.

25 (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 any prescribed charge, to receive a copy of an entry in the Register.

### 30 **PART IX—MISCELLANEOUS**

#### **Annual Report**

58. (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.

35 (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.

40 (3) The first report under sub-section (1) and the first report under sub-section (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 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.

### Certified copies of records

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59. (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 a record in the custody 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.

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### Transitional

60. (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.

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(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.

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(3) Where, immediately before the commencement of this Part, 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 sub-section 6 (2) applies accordingly.

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### Regulations

61. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, including making provision for or in relation to the making of, and the requiring of deposits on account of, charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of—

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(a) searches carried out to comply with requests made for access to, or for information contained in, records; and

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(b) the provision of copies or transcripts of records in pursuance of requests made in accordance with this Act.



