



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 31 of 1991

An Act to amend the Local Government Act 1934.

[Assented to 24 April 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Local Government (Freedom of Information) Amendment Act 1991*.

(2) The *Local Government Act 1934* is referred to in this Act as “the principal Act”.

## Commencement

2. This Act will come into operation on 1 January 1992.

## Annual Report

3. Section 42a of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) The report must state the number of council certificates issued under section 65zy in respect of restricted documents, the nature of the documents to which the certificates related and the provisions of Part VA by virtue of which the documents were restricted.

## Insertion of Part VA

4. The following Part is inserted after section 65 of the principal Act:

### PART VA

#### ACCESS TO COUNCILS' DOCUMENTS

##### DIVISION I—PRELIMINARY

## Interpretation

65a. (1) In this Part—

“council” includes a council committee or a controlling authority established under Part XIII:

“court” includes a justice or a coroner:

“document” includes anything in which information is stored or from which information may be reproduced:

“personal affairs” of a person includes that person’s—

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records;
- (e) personal qualities or attributes:

“policy or administrative document”, in relation to a council, means—

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
- (b) a document containing particulars of any administrative scheme;
- (c) a document containing a statement of the manner, or intended manner, of administration of any legislative instrument or administrative scheme;
- (d) a document describing the procedures to be followed in investigating any contravention or possible contravention of any legislative instrument or administrative scheme;

or

- (e) any other document of a similar kind,

that is used by the council in connection with the exercise of such of its functions as affects or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject, but does not include a legislative instrument:

“restricted document” means a document that is an exempt document by virtue of a provision of Subdivision I of Division II:

“State” includes Territory:

“State Records” means the office formerly known as the Public Record Office of South Australia, being the place appointed by the Libraries Board of South Australia under section 34 of the *Libraries Act 1982* for the custody of public records that have been delivered into the Board’s possession.

(2) A council is to be taken to hold a document if the council has an immediate right of access to the document.

(3) Where—

- (a) a council holds information in computer storage;

and

- (b) a particular document is capable of being produced by the computer on the basis of information so stored,

the council is to be taken to hold that document.

#### Documents in State Records

65b. If a document held by a council is deposited in the office of State Records, the document is, for the purposes of this Part, to be taken to continue in the possession of the council.

**Effect of this Part**

65c. (1) This Part does not prevent a council from giving access to a document without formal application and without other formality and it does not derogate from other provisions of this Act under which access to documents is required or permitted.

(2) Nothing in this Part is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

**DIVISION II—EXEMPT DOCUMENTS****SUBDIVISION I—RESTRICTED DOCUMENTS****Documents subject to order under section 64 (6)**

65d. (1) A document is an exempt document if the council or a committee of the council has made an order under section 64 (6) that the document or a part of the document be kept confidential.

(2) A document is not an exempt document by virtue of this section if 30 years have passed since the end of the calendar year in which the document came into existence.

**Exempt documents under interstate Freedom of Information legislation**

65e. A document is an exempt document if—

(a) it contains information communicated to a council by another council, the Government of South Australia or the Government of the Commonwealth or of another State;

and

(b) notice has been received from either a council, the Government of South Australia or the Government of the Commonwealth or of the other State that the information is exempt matter within the meaning of this Act, the *Freedom of Information Act 1991* or a corresponding law of the Commonwealth or that other State.

**SUBDIVISION II—DOCUMENTS REQUIRING CONSULTATION****Documents affecting inter-governmental or local governmental relations**

65f. A document is an exempt document if it contains matter—

(a) the disclosure of which—

(i) could reasonably be expected to cause damage to relations between councils, a council and the Government of South Australia or a council and the Government of the Commonwealth;

or

(ii) would divulge information communicated in confidence by or on behalf of a council or the Government of South Australia or of the Commonwealth to a council or a person or body receiving the communication on behalf of a council;

and

(b) the disclosure of which would, on balance, be contrary to the public interest.

**Documents affecting personal affairs**

65g. (1) A document is an exempt document—

(a) if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

or

(b) if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) and the truth of those allegations or suggestions has not been established by judicial process.

(2) A document is not an exempt document by virtue of this section merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.

(3) A document that is an exempt document under this section ceases to be so exempt on the expiration of 30 years from the date that the document came into existence or, if some other period is prescribed, on the expiration of that period.

**Documents affecting business affairs**

65h. (1) A document is an exempt document—

(a) if it contains matter the disclosure of which would disclose trade secrets of any council or any other person;

(b) if it contains matter—

(i) consisting of information (other than trade secrets) that has a commercial value to any council or any other person;

and

(ii) the disclosure of which could reasonably be expected to destroy or diminish the commercial value of the information;

or

(c) if it contains matter—

(i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any council or any other person;

and

(ii) the disclosure of which could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to a council.

(2) A document is not an exempt document by virtue of this section merely because it contains matter concerning the business, professional, commercial or financial affairs of the council or other person by or on whose behalf an application for access to the document is made.

**Documents affecting the conduct of research**

65i. (1) A document is an exempt document if it contains matter—

(a) that relates to the purpose or results of research (including research that is yet to be commenced or yet to be completed);

and

(b) the disclosure of which could reasonably be expected to have an adverse effect on the council or other person by or on whose behalf the research is being, or is intended to be, carried out.

(2) A document is not an exempt document by virtue of this section merely because it contains matter concerning research that is being, or is intended to be, carried out by the council or other person by or on whose behalf an application for access to the document is made.

#### SUBDIVISION III—OTHER DOCUMENTS

##### **Internal working documents**

65j. (1) A document is an exempt document if it contains matter—

(a) that relates to—

(i) any opinion, advice or recommendation that has been obtained, prepared or recorded;

or

(ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the council;

and

(b) the disclosure of which would, on balance, be contrary to the public interest.

(2) A document is not an exempt document by virtue of this section if it merely consists of—

(a) matter that appears in a council's policy or administrative document;

or

(b) factual or statistical material.

##### **Documents subject to legal professional privilege**

65k. (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document by virtue of this section merely because it contains matter that appears in a council's policy or administrative document.

##### **Documents the subject of secrecy provisions**

65l. (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

(2) A document is not an exempt document by virtue of this section unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.

##### **Documents containing confidential material**

65m. A document is an exempt document—

(a) if it contains matter the disclosure of which would found an action for breach of confidence;

or

(b) if it contains matter obtained in confidence the disclosure of which—

(i) might reasonably be expected to prejudice the future supply of such information to a council;

and

(ii) would, on balance, be contrary to the public interest.

#### **Documents affecting financial or property interests**

65n. A document is an exempt document if it contains matter the disclosure of which—

(a) could reasonably be expected to have a substantial adverse effect on the financial or property interests of a council;

and

(b) would, on balance, be contrary to the public interest.

#### **Documents concerning operations of councils**

65o. (1) A document is an exempt document if it contains matter the disclosure of which—

(a) could reasonably be expected—

(i) to have a substantial adverse effect on the management or assessment by a council of the council's personnel;

(ii) to have a substantial adverse effect on the effective performance by a council of the council's functions;

or

(iii) to have a substantial adverse effect on the conduct of industrial relations by a council;

and

(b) would, on balance, be contrary to the public interest.

(2) A document is an exempt document if—

(a) it relates to commercial activities engaged in by a council;

and

(b) it contains matter the disclosure of which could prejudice the competitiveness of the council in carrying on those commercial activities.

#### **Documents subject to contempt, etc.**

65p. A document is an exempt document if it contains matter the public disclosure of which would—

(a) constitute contempt of court;

(b) contravene any order or direction of a person or body having power to receive evidence on oath;

or

(c) infringe the privilege of Parliament.

**Private documents in public library or archival collections**

65q. A document is an exempt document—

(a) if it has been created otherwise than by a council;

and

(b) if it is held in a public library or archival collection subject to a condition imposed by the person or body (not being a council) by whom it has been placed in the possession of the library—

(i) prohibiting its disclosure to members of the public generally or to certain members of the public;

or

(ii) restricting its disclosure to certain members of the public.

**DIVISION III—PUBLICATION OF CERTAIN INFORMATION****Publication of information concerning councils**

65r. (1) A council—

(a) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be prepared an up-to-date information statement;

and

(b) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be published, in a newspaper circulating in the area of the council, an up-to-date information summary.

(2) An information statement must contain—

(a) a description of the structure and functions of the council (including of any board, committee or other body constituted by two or more persons that is part of the council or has been established for the purpose of advising the council and whose meetings are open to the public or the minutes of whose meetings are available for public inspection);

(b) a description of the ways in which the functions (including, in particular, the decision-making functions) of the council affect members of the public;

(c) a description of any arrangements that exist to enable members of the public to participate in the formulation of the council's policy and the exercise of the council's functions;

(d) a description of the various kinds of documents that are usually held by the council, including—

(i) a description of the various kinds of documents that are available for inspection at the council (whether as part of a public register or otherwise) in accordance with the provisions of a legislative instrument other than this Act, whether or not inspection of any such document is subject to a fee or charge;

(ii) a description of the various kinds of documents that are available for purchase from the council;

and

(iii) a description of the various kinds of documents that are available from the council free of charge;

(e) a description of the arrangements that exist to enable a member of the public to obtain access to the council's documents and to seek amendment of the council's records concerning his or her personal affairs;

and

(f) a description of the procedures of the council in relation to the giving of access to the council's documents and to the amendment of the council's records concerning the personal affairs of a member of the public, including—

(i) the designation of the officer or officers to whom the inquiries should be made;

and

(ii) the address or addresses at which applications under this Part should be lodged.

(3) An information summary—

(a) must identify each of the council's policy or administrative documents;

(b) must identify the most recent information statement published under this section;

(c) must specify the designation of the officer or officers to whom inquiries concerning the procedures for inspecting and purchasing the council's policy or administrative documents and information statements should be made;

and

(d) must specify the address or addresses at which, and the times during which, the council's policy or administrative documents and information statements may be inspected and purchased.

(4) Nothing in this section requires the publication of information if its inclusion in a document would result in the document being an exempt document.

#### **Availability of certain documents**

65s. (1) A council must cause copies of—

(a) its most recent information statement;

(b) its most recent information summary;

and

(c) each of its policy or administrative documents,

to be made available for inspection and purchase by members of the public.

(2) Subsection (1) does not apply in relation to a policy or administrative document that an agency is required by the *Freedom of Information Act 1991* to make available for inspection and purchase by members of the public.

(3) Nothing in this section prevents a council from deleting information from the copies of a policy or administrative document if its inclusion in the document would result in the document being an exempt document otherwise than by virtue of section 65j or 65k.



- (4) A council should not enforce a particular policy to the detriment of a person—
- (a) if the relevant policy or administrative document should have been, but was not, made available for inspection and purchase in accordance with this section at the time the person became liable to the detriment;
- and
- (b) the person could, by knowledge of the policy have avoided liability to the detriment.
- (5) During the period of 12 months following the commencement of this section—
- (a) a council is required to comply with subsection (1) only to such extent as is reasonably practicable;
- and
- (b) subsection (4) does not have effect.

#### DIVISION IV—ACCESS TO DOCUMENTS

##### SUBDIVISION I—GENERAL

#### **Right of access to councils' documents**

65t. A person has a legally enforceable right to be given access to a council's documents in accordance with this Part.

#### **Applications for access to councils' documents**

65u. An application for access to a council's document—

- (a) must be in writing;
  - (b) must specify that it is made under this Part;
  - (c) must be accompanied by such application fee as may be prescribed;
  - (d) must contain such information as is reasonably necessary to enable the document to be identified;
  - (e) must specify an address in Australia to which notices under this Part should be sent;
- and
- (f) must be lodged at an address specified in the council's information statement for the purpose of lodgment of applications under this Part, and may request that access to the document be given in a particular way.

#### **Time within which applications to be dealt with**

65v. An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

#### **Incomplete and wrongly directed applications**

65w. A council must not refuse to accept an application merely because it does not contain sufficient information to enable the document to which it relates to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

**Transfer of applications**

65x. (1) A council to which an application has been made may transfer the application to another council if the document to which it relates—

(a) is not held by the council but is, to the knowledge of the council, held by the other council;

or

(b) is held by the council but is more closely related to the functions of the other council.

(2) A council that transfers an application to another council must, if it holds the document to which the application relates, forward a copy of the document to the other council together with the application.

(3) A council that transfers an application to another council must forthwith cause notice of that fact to be given to the applicant.

(4) Such a notice must specify the day on which, and the council to which, the application was transferred.

(5) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

(6) An application that is transferred from one council to another is to be taken to have been received by the other council—

(a) on the day on which it is transferred;

or

(b) 14 days after the day on which it was received by the council to which it was originally made,

whichever is the earlier.

**Councils may require advance deposits**

65y. (1) If, in the opinion of a council, the cost of dealing with an application is likely to exceed the application fee, the council may request the applicant to pay to it such reasonable amount, by way of advance deposit, as the council may determine.

(2) If, in the opinion of a council, the cost of dealing with an application is likely to exceed the sum of the application fee and of any advance deposits paid in respect of the application, the council may request the applicant to pay to it such reasonable amount, by way of further advance deposit, as the council may determine.

(3) The aggregate of the application fee and the advance deposit or deposits requested under this section must not exceed the council's estimate of the cost of dealing with the application.

(4) A request for an advance deposit must be accompanied by a notice that sets out the basis on which the amount of the deposit has been calculated.

(5) The amount of an advance deposit requested by a council in respect of an application must be paid to the council within such period as the council specifies in the request.

(6) The period between the making of a request under this section and the payment of an advance deposit in accordance with the request is not to be taken into account in calculating the period of 45 days within which the relevant application is to be dealt with.

**Councils may refuse to deal with certain applications**

65z. (1) A council may refuse to deal with an application if it appears to the council that the nature of the application is such that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the council's resources from their use by the council in the exercise of its functions.

(2) A council must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the council's resources from their use by the council in the exercise of its functions.

(3) A council may refuse to continue dealing with an application if—

- (a) it has requested payment of an advance deposit in relation to the application;
- and
- (b) payment of the deposit has not been made within the period specified in the request.

(4) If a council refuses to continue dealing with an application under subsection (3)—

- (a) it must refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the council in dealing with the application;

and

- (b) it may retain the remainder of those deposits.

(5) A council that refuses to deal with an application under this section must forthwith cause written notice of that fact to be given to the applicant.

(6) Such a notice must specify—

- (a) the reasons for the refusal;
- and
- (b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.

(7) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

(8) A refusal to deal with, or to continue to deal with, an application under this section is a determination for the purposes of this Part.

**Determination of applications**

65za. (1) After considering an application for access to a document, a council must determine—

- (a) whether access to the document is to be given (either immediately or subject to deferral) or refused;
- (b) if access to the document is to be given—any charge payable in respect of the giving of access;

and

- (c) any charge payable for dealing with the application.

(2) A council that fails to determine an application within 45 days after the application is received by the council is, for the purposes of this Part, to be taken to have determined the application by refusing access to the document to which it relates.

(3) This section does not require a council to determine an application if the council has, in accordance with this Part, refused to deal with, or to continue to deal with, the application.

#### **Refusal of access**

65zb. (1) A council may refuse access to a document—

- (a) if it is an exempt document;
- (b) if it is a document that is available for inspection at that or some other council (whether as part of a public register or otherwise) in accordance with Division III, or in accordance with a legislative instrument other than this Part, whether or not inspection of the document is subject to a fee or charge;
- (c) if it is a document that is usually and currently available for purchase;
- (d) if it is a document that—
  - (i) was not created or collated by the council itself;
  - and
  - (ii) genuinely forms part of library material held by the council;

or

(e) if it is a document that came into existence before 1 January 1987.

(2) Subsection (1) (e) does not permit a council to refuse access to—

- (a) a document that contains information concerning the personal affairs of the applicant;
- or
- (b) a document that is reasonably necessary to enable some other document (being a document to which the council has given access under this Part) to be understood.

(3) Subject to subsection (4), a council must refuse access to a restricted document that is the subject of an order under section 64 (6).

(4) If—

- (a) it is practicable to give access to a copy of a document from which the exempt matter has been deleted;
- and
- (b) it appears to the council (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy,

the council must not refuse to give access to the document to that limited extent (even though the exempt document may be a restricted document subject to a council certificate under section 65zy).

**Deferral of access**

65zc. (1) A council may defer access to a document—

- (a) if it is a document that is required by law to be published but is yet to be published;
- (b) if it is a document that has been prepared for presentation to the council, or that has been designated by the council as appropriate for presentation to the council, but is yet to be presented;

or

- (c) if it is a document that has been prepared for submission to a particular person or body, or that has been designated by the council as appropriate for submission to a particular person or body, but is yet to be submitted.

(2) Access to a document to which subsection (1) (a) applies may not be deferred beyond the time the document is required by law to be published.

(3) Access to a document to which subsection (1) (b) or (c) applies may not be deferred for more than a reasonable time after the date of its preparation.

**Forms of access**

65zd. (1) Access to a document may be given to a person—

- (a) by giving the person a reasonable opportunity to inspect the document;
- (b) by giving the person a copy of the document;
- (c) in the case of a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device—by making arrangements for the person to hear or view those sounds or visual images;
- (d) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound—by giving the person a written transcript of the words recorded in the document;
- (e) in the case of a document in which words are contained in the form of shorthand writing or in encoded form—by giving the person a written transcript of the words contained in the document;

or

- (f) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of a written document—by giving the person a written document so reproduced.

(2) If an applicant has requested that access to a document be given in a particular way, access to the document must be given in that way unless giving access as requested—

- (a) would unreasonably divert the council's resources from their use by the council in the exercise of its functions;
- (b) would be detrimental to the preservation of the document or (having regard to the physical nature of the document) would otherwise not be appropriate;

or

- (c) would involve an infringement of copyright in matter contained in the document,

in which case access may be given in some other way.

(3) If an applicant has requested that access to a document be given in a particular way and access in that way is given in some other way, the applicant is not required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given as requested.

(4) This section does not prevent a council from giving access to a document in any way agreed on between the council and the person to whom access is to be given.

(5) A council may refuse to give access to a document if a charge payable in respect of the application, or giving access to the document, has not been paid.

#### Notices of determination

65ze. (1) A council must notify an applicant in writing—

(a) of its determination of his or her application;

or

(b) if the application relates to a document that is not held by the council—of the fact that the council does not hold such a document.

(2) Such a notice must specify—

(a) the day on which the determination was made;

(b) —

(i) the name and designation of the officer by whom the determination was made;

(ii) the rights of review and appeal conferred by this Part;

and

(iii) the procedures to be followed for the purpose of exercising those rights;

(c) if the determination is to the effect that access to a document is to be given (either immediately or subject to deferral)—the amount of any charge payable in respect of the giving of access;

(d) if the determination is to the effect that the document is an exempt document and that access is to be given to a copy of the document from which exempt matter has been deleted—the fact that the document is such a copy and the provision of this Part by virtue of which the document is an exempt document;

(e) if the determination is to the effect that access to a document is to be given subject to deferral—

(i) the reason for the deferral;

and

(ii) if applicable—the likely period of deferral;

(f) if the determination is to the effect that access to a document is refused—

(i) the reasons for the refusal;

and

- (ii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based;

and

- (g) the amount of any charge for dealing with the application, together with—

- (i) a statement of any amount payable by the applicant;

or

- (ii) a statement of any amount refundable to the applicant,

in relation to the charge, having regard to the sum of any advance deposits paid in respect of the application.

(3) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

#### **Subdivision to be read subject to Subdivision II**

65zf. This Subdivision has effect subject to the provisions of Subdivision II.

#### SUBDIVISION II—CONSULTATION

##### **Access to documents requiring consultation**

65zg. (1) This section applies to—

- (a) a document that contains matter concerning the affairs of—

- (i) the Government of the Commonwealth or a State;

or

- (ii) another council;

- (b) a document that contains information concerning the personal affairs of any person (whether living or dead);

- (c) a document that contains—

- (i) information concerning the trade secrets of any person;

- (ii) information (other than trade secrets) that has a commercial value to any person;

or

- (iii) any other information concerning the business, professional, commercial or financial affairs of any person;

and

- (d) a document that contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person.

(2) A council must not give access under this Act to a document to which this section applies (except to in the case of a document referred to in subsection (1) (a), the Government or council concerned, or, in any other case, the person concerned) unless the council has taken such steps as are reasonably practicable to obtain the views of the Government, council or person concerned as to whether or not the document is an exempt document by virtue of a provision of Subdivision II of Division II.

- (3) If—

(a) in the case of an application for access to a document referred to in subsection (1) (b)—

(i) the council determines, after having sought the views of the person concerned, that access to the document is to be given and the views of the person concerned are that the document is an exempt document by virtue of section 65g;

or

(ii) after having taken reasonable steps to obtain the views of the person concerned, the council is unable to obtain the views of the person and the council determines that access to the document should be given;

or

(b) in any other case—the council determines, after seeking the views of the Government, council or person concerned, that access to a document to which this section applies is to be given and the views of the Government, council or person concerned are that the document is an exempt document by virtue of a specified provision of Subdivision II of Division II,

the council must—

(c) forthwith give written notice to the Government, council or person concerned—

(i) that the council has determined that access to the document is to be given;

(ii) of the rights of review and appeal conferred by this Part in relation to the determination;

and

(iii) of the procedures to be followed for the purpose of exercising those rights;

and

(d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Part may be made or, if such an application is made, until after the application has been finally disposed of.

(4) If—

(a) an application is made to a council for access to a document referred to in subsection (1) (b);

(b) the document contains information of a medical or psychiatric nature concerning the applicant;

(c) the council is of the opinion that disclosure of the information to the applicant may have an adverse effect on the physical or mental health, or the emotional state, of the applicant;

and

(d) the council decides that access to the document is to be given,

it is sufficient compliance with this section if access to the document is given to a registered medical practitioner nominated by the applicant.



(5) A reference in this section to the person concerned is, in the case of a deceased person, a reference to the personal representative of that person or, if there is no personal representative, the closest relative of that person of or above the age of 18 years.

#### DIVISION V—AMENDMENT OF RECORDS

##### **Right to apply for amendment of councils' records**

65zh. A person to whom access to a council's documents has been given may apply for the amendment of the council's records if—

- (a) the document contains information concerning the person's personal affairs;
  - (b) the information is available for use by the council in connection with its administrative functions;
- and
- (c) the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

##### **Applications for amendment of councils' records**

65zi. An application for the amendment of a council's records—

- (a) must be in writing;
  - (b) must specify that it is made under this Part;
  - (c) must contain such information as is reasonably necessary to enable the council's document to which the applicant has been given access to be identified;
  - (d) must specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out-of-date or misleading;
  - (e) if the applicant claims that the information contained in the document is incomplete or out-of-date—must be accompanied by such information as is necessary to complete the council's records or to bring them up-to-date;
  - (f) must specify an address in Australia to which notices under this Part should be sent;
- and
- (g) must be lodged at an address specified in the council's information statement for the purpose of lodgment of applications under this Part.

##### **Time within which applications to be dealt with**

65zj. An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

##### **Incomplete applications**

65zk. A council must not refuse to accept an application merely because the application does not contain sufficient information to enable the council's document to which the applicant has been given access to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

**Determination of applications**

65zl. (1) A council must determine an application—

(a) by amending its records in accordance with the application;

or

(b) by refusing to amend its records.

(2) A council that fails to determine an application within 45 days after the application is received by the council is, for the purposes of this Part, to be taken to have determined the application by refusing to amend its records in accordance with the application.

**Refusal to amend records**

65zm. A council may refuse to amend its records in accordance with an application—

(a) if it is satisfied that its records are not incomplete, incorrect, out-of-date or misleading in a material respect;

(b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect;

or

(c) if the procedures for amending its records are prescribed by or under the provisions of a legislative instrument other than this Part, whether or not amendment of those records is subject to a fee or charge.

**Notices of determination**

65zn. (1) A council must give written notice to the applicant—

(a) of its determination of his or her application;

or

(b) if the application relates to records that are not held by the council—of the fact that the council does not hold such records.

(2) Such a notice must specify—

(a) the day on which the determination was made;

and

(b) if the determination is to the effect that amendment of the council's records is refused—

(i) the name and designation of the officer by whom the determination was made;

(ii) the reasons for the refusal;

(iii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based;

(iv) the rights of review and appeal conferred by this Part in relation to the determination;

and

(v) the procedures to be followed for the purpose of exercising those rights.

(3) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

#### Notations to be added to records

65zo. (1) If a council has refused to amend its records, the applicant may, by notice in writing lodged at an office of the council, require the council to add to those records a notation—

(a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading;

and

(b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.

(2) A council must comply with the requirements of a notice lodged under this section and must cause written notice of the nature of the notation to be given to the applicant.

(3) If a council discloses to any person (including any other council) any information, contained in the part of its records to which a notice under this section relates, the council—

(a) must ensure that, when the information is disclosed, a statement is given to that person—

(i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading;

and

(ii) setting out particulars of the notation added to its records under this section;

and

(b) may include in the statement the reason for the council's refusal to amend its records in accordance with the notation.

(4) Nothing in this section is intended to prevent or discourage councils from giving particulars of a notation added to its records under this section to a person (including any other council and any chief executive officer of a council) to whom information contained in those records was given before the commencement of this section.

## DIVISION VI—REVIEW

### SUBDIVISION I—INTERNAL REVIEW

#### Interpretation

65zp. In this Division—

“local court” means a local court of limited jurisdiction within, or nearest to, the area of the council whose determination is the subject of appeal under this Division.

**Internal review**

65zq. (1) Subject to subsection (6), a person who is aggrieved by a determination made by a council under Division IV or V is entitled to a review of the determination.

(2) An application for review of a determination—

(a) must be in writing;

(b) must be accompanied by such application fee as may be prescribed;

(c) must be addressed to the chief executive officer of the council;

(d) must specify an address in Australia to which notices under this Part should be sent;

and

(e) must be lodged, at an address specified in the council's information statement for the purpose of lodgment of applications under this Part, within 28 days after the day on which notice of the determination was given to the applicant or within such further time as the chief executive officer of the council may allow.

(3) On an application for review under this section, the council may confirm, vary or reverse the determination under review.

(4) If on a review the council varies or reverses a determination so that access to a document is to be given (either immediately or subject to deferral), the council must refund any application fee paid in respect of the review.

(5) A council that fails to determine an application made under this section within 45 days after it is received by the council is, for the purposes of this Part, to be taken to have confirmed the determination in respect of which review is sought.

(6) Where a determination is made by resolution of a council, it is not subject to review under this section.

**SUBDIVISION II—REVIEW BY THE OMBUDSMAN****Review by the Ombudsman**

65zr. (1) A person—

(a) who is dissatisfied with a determination of a council that is liable to internal review and remains dissatisfied following an internal review;

or

(b) who is dissatisfied with a determination that is not subject to internal review,

may apply for a review of the determination to the Ombudsman.

(2) Where such an application is made—

(a) the Ombudsman may carry out an investigation into the subject-matter of the application (and for the purposes of such an investigation the Ombudsman may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act);

and

(b) if satisfied that the determination was not properly made, direct the council to make a determination in specified terms.

(3) The propriety of a council certificate under section 65zy cannot be questioned in proceedings under this section.

#### SUBDIVISION III—REVIEW BY THE DISTRICT COURT

##### Right of appeal

65zs. (1) A person—

(a) who is dissatisfied with a determination of a council that is liable to internal review and remains dissatisfied following an internal review;

or

(b) who is dissatisfied with a determination that is not subject to internal review, may appeal against the determination to a local court.

(2) On such an appeal the Court may—

(a) confirm, vary or reverse the determination to which the appeal relates or remit the subject-matter of the appeal to the council for further consideration;

(b) make such further or other orders (including orders for costs) as the justice of the case may require.

##### Time within which appeals to be commenced

65zt. (1) An appeal must be commenced—

(a) where there has been a review of the determination by the council or the Ombudsman—within 60 days after notice of the decision on review of the determination is given to the applicant;

or

(b) in any other case—within 60 days after the date of the determination.

(2) Where an application for review is made to the Ombudsman, an appeal cannot be commenced until the application is decided and the commencement of an appeal to a local court bars any right to apply to the Ombudsman for a review.

##### Procedure for hearing appeals

65zu. (1) Subject to subsection (2), an appeal will be by way of a re-hearing and evidence may be taken on the appeal.

(2) Where it appears that the determination subject to appeal has been made on grounds of public interest, and the Minister administering the *Freedom of Information Act 1991* makes known to the Court his or her assessment of what the public interest requires in the circumstances of the case subject to the appeal, the Court must uphold that assessment unless satisfied that there are cogent reasons for not doing so.

(3) Neither the Ombudsman nor any officer of the Ombudsman can be called to give evidence on an appeal.

**Consideration of restricted documents**

65zv. (1) A local court may, on the application of the appellant, consider the grounds on which it is claimed that a document is a restricted document, notwithstanding that the document is the subject of a council certificate under section 65zy.

(2) In any proceedings under this section, the Court must, on the application of the council concerned, receive evidence and hear argument in the absence of the public, the appellant and, where in the opinion of the Court it is necessary to do so in order to prevent the disclosure of any exempt matter, the appellant's representative.

(3) If the Court is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim, it may require the document to be produced in evidence before it.

(4) After considering any document produced before it, the Court may make a declaration—

(a) if satisfied that there are reasonable grounds for the claim—that the document is a restricted document by virtue of a specified provision of Subdivision I of Division II;

(b) if not satisfied that there are reasonable grounds for the claim—that the document is not a restricted document.

(5) The Court must not make such a declaration unless the Court—

(a) has given the council a reasonable opportunity to appear and be heard in relation to the matter;

and

(b) has given due weight to any submissions made by or on behalf of the council.

(6) For the purposes of any proceedings under this section, the council is a party to the proceedings.

(7) A council certificate under section 65zy the subject of a declaration under this section ceases to have effect at the end of 45 days after the declaration is made unless, before the end of that period, the council confirms the certificate by resolution of the council.

(8) If the council confirms the certificate, the council must give notice of the confirmation of the certificate to the Minister administering the *Freedom of Information Act 1991* and the appellant.

(9) Such a notice must specify—

(a) the reasons for the council's decision to confirm the certificate;

and

(b) the findings on any material questions of fact, together with a reference to the sources of information on which those findings are based.

(10) Nothing in this section requires any matter to be included in a notice if its inclusion in the notice would result in the notice being an exempt document.

(11) If a council certificate under section 65zy ceases to have effect by virtue of this section, the document to which it relates is not to be regarded as a restricted document by virtue of Subdivision I of Division II.

(12) If the council withdraws a certificate the subject of an order under this section before the end of the period of 45 days referred to in subsection (7), the council must, as soon as practicable, serve notice on the appellant that the certificate is no longer in force.

**Disciplinary action**

65zw. Where a local court, at the completion of an appeal under this Part, is of the opinion that there is evidence that a person, being an officer of a council, has been guilty of a breach of duty or of misconduct in the administration of this Part and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Court may bring the evidence to the notice of—

(a) if the person is the chief executive officer of a council—that council;

or

(b) if the person is an officer of a council but not the chief executive officer of the council—the chief executive officer of that council.

**Appeals to Supreme Court**

65zx. (1) Subject to the rules of the Supreme Court, an appeal lies against a decision of a local court under this Division.

(2) Such an appeal is limited to questions of law.

## DIVISION VII—MISCELLANEOUS

**Council certificates**

65zy. (1) A certificate signed by the chairman or mayor of a council that states that a specified document is a restricted document by virtue of a provision of Subdivision I of Division II is, except for the purposes of section 65zv, conclusive evidence that the document is a restricted document by virtue of that provision.

(2) A certificate under this section ceases to have effect at the end of two years after it is signed unless it is sooner withdrawn by resolution of the council.

(3) Nothing in subsection (2) prevents the council from approving, by resolution, the issue of a further certificate in respect of the same document.

**Burden of proof**

65zz. In any proceedings concerning a determination made under this Part by a council, the burden of establishing that the determination is justified lies on the council.

**Protection in respect of actions for defamation or breach of confidence**

65zza. (1) If access to a document is given pursuant to a determination under this Part, and if the person by whom the determination is made honestly believes, when making the determination, that this Part permits or requires the determination to be made—

(a) no action for defamation or breach of confidence lies against a council or an officer of a council, by reason of the making of the determination or the giving of access;

and

(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the author of the document or any other person by reason of the author or other person having supplied the document to a council or the chief executive officer of a council.

(2) Neither the giving of access to a document pursuant to a determination under this Part nor the making of such a determination constitutes, for the purposes of the law relating to defamation or breach of confidence, an authorization or approval of the publication of the document or its contents by the person to whom access is given.

**Protection in respect of certain criminal actions**

65zzb. If access to a document is given pursuant to a determination under this Part, and if the person by whom the determination is made honestly believes, when making the determination, that this Part permits or requires the determination to be made, neither the person by whom the determination is made nor any other person concerned in giving access to the document is guilty of an offence merely because of the making of the determination or the giving of access.

**Fees and charges**

65zzc. (1) The fees and charges payable under this Part must be fixed by the regulations or in accordance with a scale fixed in the regulations.

(2) The regulations—

(a) must provide for such waiver or remission of fees as may be necessary to ensure that disadvantaged persons are not prevented from exercising rights under this Part by reason of financial hardship;

(b) must provide for access to documents by Members of Parliament without charge unless the work generated by the application exceeds a threshold stated in the regulations,

and (except as provided above) the fees or charges must reflect the cost incurred by councils in exercising their functions under this Part.

(3) Where a council determines a fee or charge it must, at the request of the person required to pay, review the fee or charge and, if it thinks fit, reduce it.

(4) A person dissatisfied with the decision of a council on an application for review of a fee or charge may apply to the Ombudsman for a further review, and the Ombudsman may, according to his or her determination of what is fair and reasonable in the circumstances of the particular case—

(a) waive, confirm or vary the fee or charge;

(b) give directions as to the time for payment of the fee or charge.

(5) A fee or charge may be recovered by a council as a debt.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor