

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

ARCHIVES BILL 1983

TABLE OF PROVISIONS

PART I—PRELIMINARY

- Clause
1. Short title
 2. Commencement
 3. Interpretation
 4. Extension to Territories

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

5. Establishment and functions of Australian Archives
6. Powers of Archives

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

7. Director-General
8. Delegation by Director-General
9. Staff

PART IV—THE ADVISORY COUNCIL ON AUSTRALIAN ARCHIVES

10. Advisory Council on Australian Archives
11. Functions of Council
12. Chairman and Deputy Chairman of Council
13. Deputies of members
14. Remuneration and allowances of members

TABLE OF PROVISIONS—*continued*

Clause

- 15. Termination of office of member
- 16. Resignation of member
- 17. Meetings of the Council

PART V—COMMONWEALTH RECORDS

Division 1—Preliminary

- 18. Records of the Parliament
- 19. Court records
- 20. Regulations and arrangements relating to certain records
- 21. Archives may be given custody of certain records
- 22. Records of Royal Commissions
- 23. Records of inter-governmental authorities

Division 2—Dealings with Commonwealth Records

- 24. Disposal, destruction, & c., of Commonwealth records
- 25. Advice to Council on disposal practices
- 26. Alteration of Commonwealth records
- 27. Transfer of Commonwealth records to Archives
- 28. Archives to have access to records
- 29. Exemption of certain records
- 30. Commonwealth records to be available to Commonwealth institutions

Division 3—Access to Commonwealth Records

- 31. Records in open access period to be publicly available
- 32. Consultation with States
- 33. Exempt records
- 34. Certificates by Ministers as to certain exempt records
- 35. Identification of exempt records
- 36. Forms of access
- 37. Conditions in respect of proper care of records
- 38. Access to part of exempt record
- 39. Information as to existence of certain documents
- 40. Notification of decisions

Division 4—Review of Decisions

- 41. Interpretation
- 42. Internal reconsideration of decisions
- 43. Applications to Administrative Appeals Tribunal
- 44. Powers of Tribunal
- 45. Proceedings upon exercise of powers under sub-section 44 (4) or (5)
- 46. Constitution of Tribunal for purposes of proceedings under sub-section 44 (4) or (5)
- 47. Hearing of certain proceedings before the Tribunal
- 48. Modification of section 42 of the *Administrative Appeals Tribunal Act 1975*
- 49. Production to the Tribunal of records in relation to which a certificate has been issued
- 50. Parties
- 51. Onus
- 52. Tribunal to ensure non-disclosure of certain matters
- 53. Production of exempt records
- 54. Evidence of certificates
- 55. Complaints to Ombudsman

Division 5—Miscellaneous

- 56. Arrangements for accelerated or special access
- 57. Protection against certain actions
- 58. Access to records apart from Act

TABLE OF PROVISIONS—*continued*

Clause

- 59. Security classifications
- 60. Transitional provisions relating to access

PART VI—OBJECTS OF ARCHIVAL SIGNIFICANCE

- 61. Declaration of objects of archival significance
- 62. Samples of material for Archives

PART VII—CARE OF MATERIAL OF THE ARCHIVES

- 63. Location of material of the Archives
- 64. Custody of material of the Archives other than by Archives

PART VIII—REGISTERS AND GUIDE RELATING TO ARCHIVES

- 65. Australian National Register of Records
- 66. Australian National Guide to Archival Material
- 67. Australian National Register of Research Involving Archives

PART IX—MISCELLANEOUS

- 68. Annual Report
- 69. Certified copies of records
- 70. Transitional
- 71. Regulations



1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 2 June 1983)

(THE ATTORNEY-GENERAL, SENATOR GARETH EVANS)

No. 71

A BILL

FOR

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

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

- 5 1. This Act may be cited as the *Archives Act 1983*.

Commencement

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

Interpretation

- 10 3. (1) In this Act, unless the contrary intention appears—

“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—

(i) by, or in accordance with the provisions of, an Act, regulations made under an Act or a law of a Territory other than the Northern Territory or Norfolk Island; 5

(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 10

(c) a prescribed company or association over which the Commonwealth is in a position to exercise control,

but does not include a court, the Northern Territory or the Administration of an external Territory;

“Cabinet notebook” means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet, being notes made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet; 15

“Chairman” means the Chairman of the Council; 20

“Commonwealth institution” means—

(a) the official establishment of the Governor-General;

(b) the Executive Council;

(c) the Senate;

(d) the House of Representatives; 25

(e) a Department;

(f) a Federal court or a court of a Territory other than the Northern Territory or Norfolk Island;

(g) an authority of the Commonwealth; or

(h) the Administration of an external Territory other than Norfolk Island; 30

“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 22, 35

but does not include a record that is a Cabinet notebook, is exempt material, or is a register or guide maintained in accordance with Part VIII; 40

“Council” means the Advisory Council on Australian Archives established by this Act;

“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—

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

“Deputy Chairman” means the Deputy Chairman of the Council;

10 “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—

- 15 (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;
(c) material included in the collection of works of art maintained by the Australian National Gallery;
20 (d) material included in the historical material in the possession of the Museum of Australia; or
(e) material included in a collection maintained by an institution declared by the regulations to be a custodial institution for the purposes of this definition,

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

“material” means records and other objects;

“material of the Archives” means—

- 30 (a) records in the custody of the Archives (other than current Commonwealth records relating to the administration of the Archives); or
(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,

35 and includes material kept in the custody of a person in accordance with arrangements made under section 64;

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

40 “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;

“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; 5

“responsible Minister”, in relation to a Commonwealth record, means the Minister to whose ministerial responsibilities the record is most closely related; 10

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

“Tribunal” means the Administrative Appeals Tribunal.

(2) For the purposes of this Act, the archival resources of the Commonwealth consist of such Commonwealth records and other material as are of national significance or public interest and relate to— 15

- (a) the history or government of Australia;
- (b) the legal basis, origin, development, organization or activities of the Commonwealth or of a Commonwealth institution; 20
- (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, 25

but do not include—

- (f) material that, in the opinion of the Minister, ought to be in the archives of another country or in the archives of an international organization;
- (g) material that relates only or principally to the history or government of a State, the Northern Territory or Norfolk Island or of a Colony that became part of the Commonwealth, not being— 30
 - (i) Commonwealth records;
 - (ii) property referred to in section 85 of the Constitution; or
 - (iii) material transferred to the Commonwealth by a State, the Northern Territory or Norfolk Island under a law or agreement; 35
- (h) material, other than Commonwealth records, relating only to a place that has been, but has ceased to be, a Territory; or
- (j) exempt material. 40

(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;

- (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 (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.

10 (6) The regulations may make provision under which, in specified cases or circumstances, records of which the Commonwealth or a Commonwealth institution has, or is entitled to have, possession are to be deemed to be Commonwealth records for the purposes of the provisions, or specified provisions, of this Act.

15 (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.

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

20 (a) material, being Commonwealth records, that was held at the commencement of Part II by a State, the Northern Territory or Norfolk Island or by an authority of a State, of the Northern Territory or of Norfolk Island and has continued since that time to be so held by that State, that Territory or that authority; or

25 (b) material, other than Commonwealth records, that is held at any time by a State or by a Territory or authority referred to in paragraph (a), except with the consent of the State, Territory or authority by which the material is held.

Extension to Territories

4. This Act extends to every external Territory.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF 30 THE AUSTRALIAN ARCHIVES

Establishment and functions of Australian Archives

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

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

(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;

40 (c) to promote, by providing advice and other assistance to Commonwealth institutions, 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;

- (d) to ascertain the material that constitutes the archival resources of the Commonwealth; 5
 - (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 10
 - (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; 15
 - (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; 20
 - (h) to encourage, facilitate, publicise and sponsor the use of archival material; 25
 - (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;
 - (k) to conduct research, and provide advice, in relation to the management and preservation of records and other archival material; 30
 - (l) to develop and foster the co-ordination of activities relating to the preservation and use of the archival resources of the Commonwealth and other archival resources relating to Australia; and
 - (m) with the approval of the Minister, and in accordance with arrangements made with a person responsible for exempt material, to perform any of the foregoing functions in relation to that material as if that material formed part of the archival resources of the Commonwealth. 35
- (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. 40

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—

- 5 (a) establish and control repositories or other facilities to house or exhibit material of the Archives and, in association with a State, the Northern Territory or other person, control repositories or other facilities in which material of the Archives is housed or exhibited;
- 10 (b) undertake the survey, appraisal, accessioning, arrangement, description and indexing of Commonwealth records;
- (c) make arrangements for the acquisition by the Commonwealth of, or of copyright in relation to, or arrangements relating to the custody of, material that forms part of the archival resources of the Commonwealth;
- 15 (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;
- 20 (e) make copies, by microfilming or otherwise, of archival material, but not so as to infringe copyright (other than copyright owned by the Commonwealth) subsisting in the material;
- (f) arrange for the publication of material forming part of the archival resources of the Commonwealth or works based on such material, but not so as to infringe copyright (other than copyright owned by the Commonwealth) subsisting in the material or works;
- 25 (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;
- 30 (k) train, or assist in the training of, persons, other than persons responsible for the keeping of current Commonwealth records, for work in connection with records and other archival material;
- (l) obtain and maintain equipment for use in retrieving, or otherwise obtaining, information from records; and
- 35 (m) provide information and facilities for persons using the material of the Archives.

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

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

Director-General

7. (1) There shall be a Director-General of the Australian Archives, who shall hold office under the *Public Service Act 1922*. 5

(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.

(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. 10

Delegation by Director-General

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 all or any of his powers under this Act, other than this power of delegation. 15

(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. 20

(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*. 25

PART IV—THE ADVISORY COUNCIL ON AUSTRALIAN ARCHIVES

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. 30

(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. 35

(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.

5 (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

10 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.

15 (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.

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

20 13. (1) A member chosen by the Senate or by the House of Representatives may appoint a Senator or a member of the House of Representatives, as the case may be, to be his deputy.

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

25 (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

30 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.

(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.

35 (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.

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

Termination of office of member

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. 5

(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. 10

(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. 15

Resignation of member

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. 20

(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 25

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

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

(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. 30

(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. 35

(6) The Chairman shall preside at all meetings of the Council at which he is present.

(7) If, at a meeting of the Council, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.

5 (8) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Council, the members present shall elect one of their number to preside at the meeting.

(9) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.

10 (10) The member presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(11) In 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

15 *Division 1—Preliminary*

Records of the Parliament

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

20 **Court records**

19. (1) Subject to sections 20 and 21, Divisions 2 and 3 do not apply to records in the possession of a court or of a registry of a court.

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

25 **Regulations and arrangements relating to certain records**

20. (1) Subject to this section, the regulations may provide that all or any of the provisions of Divisions 2 and 3 are, in such circumstances and subject to such conditions as are prescribed, to apply to all or any of the records referred to in section 18 or sub-section 19 (1), and may provide that those provisions are
30 so to apply subject to such modifications as are prescribed.

(2) Regulations shall not be made for the purposes of sub-section (1) in relation to the application of the provisions of Divisions 2 and 3 to records in the possession of the Senate, the House of Representatives or a Parliamentary Department, unless there has been consultation between the Minister and—

- 35 (a) in the case of records in the possession of the Senate or of the Department of the Senate—the President of the Senate;
- (b) in the case of records in the possession of the House of Representatives or of the Department of the House of Representatives—the Speaker of the House of Representatives; or

- (c) in the case of records in the possession of a Parliamentary Department other than the Department of the Senate or the Department of the House of Representatives—both the President of the Senate and the Speaker of the House of Representatives,

concerning the application of those provisions to those records.

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

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Archives may be given custody of certain records

21. (1) Subject to any regulations made in accordance with section 20, a person having the control of the custody of any records referred to in section 18 or sub-section 19 (1) may enter into arrangements with the Archives with respect to the custody of those records.

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(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.

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Records of Royal Commissions

22. (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.

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(2) The Commonwealth is entitled to the possession of 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.

(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.

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(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 available for public access in accordance with this Act.

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(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.

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(6) Where a Royal Commission has conducted an inquiry by virtue of a commission issued by the Governor of a State in conjunction with its inquiry

under a commission issued by the Governor-General, 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.

Records of inter-governmental authorities

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

10 (a) for the performance of functions under the law of the Commonwealth and the law of any State or States, the Northern Territory, Norfolk Island or another country; or

 (b) for the purpose of an agreement between the Commonwealth and any State or States, the Northern Territory, Norfolk Island or another country,

or to the operations of an authority or body so established.

15 ***Division 2—Dealings with Commonwealth Records***

Disposal, destruction, &c., of Commonwealth records

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

20 (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.

25 Penalty: \$2,000.

(2) Sub-section (1) does not apply to anything done—

30 (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

35 (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.

40 **(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.

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Advice to Council on disposal practices

25. (1) The Archives shall—

(a) as soon as practicable after the commencement of this Part, furnish to the Council a statement in writing setting out particulars of the practices followed by, or approved by, the Archives in respect of the destruction or other disposal of Commonwealth records whether or not those practices have been agreed upon between the Archives and any particular Commonwealth institution;

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(b) in a case where, after the commencement of this Part, the Archives alters, or approves any alteration of, any practice of a kind referred to in paragraph (a), not being a practice agreed upon between the Archives and a Commonwealth institution—furnish to the Council a statement setting out particulars of the alteration to that practice as soon as practicable after the Archives has decided to alter, or to approve the alteration of, that practice and, where possible, before the implementation of the practice as so altered; and

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25

(c) in a case where practices for the destruction or other disposal of Commonwealth records are agreed upon at any time after the commencement of this Part between the Archives and a Commonwealth institution—furnish to the Council a statement setting out particulars of those practices as soon as practicable after those practices have been agreed upon and, where possible, before the implementation of those practices.

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(2) A reference in sub-section (1) to practices agreed upon between the Archives and a Commonwealth institution includes a reference to practices so agreed upon that vary practices that have, whether before or after the commencement of this Part, been previously agreed upon between the Archives and that institution.

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Alteration of Commonwealth records

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26. (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: \$2,000.

(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 a practice or procedure approved by the Archives.

5 **Transfer of Commonwealth records to Archives**

10 **27. (1)** Subject to this Part, 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 purposes 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.

15 **(2)** Subject to this Part, 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.

Archives to have access to records

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

Exemption of certain records

25 **29. (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—

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

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

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

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

- (a) a record that is not required to be transferred to the custody of the Archives under section 27; or
- (b) a record to which the Archives is not to be entitled to have access under section 28 or is not to be entitled to have access under that section otherwise than on specified conditions to be observed by the Archives,

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

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

(4) Where—

- (a) the Archives seeks access to a Commonwealth record that is not in the custody of the Archives; and
- (b) a person responsible for the custody of the record considers that it might be appropriate for a determination to be made under 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.

(5) Where a notification under sub-section (4) has been given in respect of a record, the Archives is not entitled to access to the record for a period of one month from the date on which the notification was given, but, if the notification is withdrawn by the person responsible for the custody of the record before the expiration of that period, this sub-section ceases to have effect in relation to the record.

(6) A record that is in the open access period is not, by virtue of a determination under 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.

(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:

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

Commonwealth records to be available to Commonwealth institutions

30. (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.

(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.

Division 3—Access to Commonwealth Records

Records in open access period to be publicly available

31. (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.

(2) A Commonwealth institution that has the custody of Commonwealth records in the open access period, other than exempt records, shall make such arrangements with the Archives as will enable the Archives to meet its obligations under sub-section (1) in relation to those records.

(3) Subject to any regulations made under section 20, sub-section (2) does not apply to—

- (a) the Senate, the House of Representatives or a Parliamentary Department, in relation to records in the possession of the Senate, the House of Representatives or the Parliamentary Department; or
- (b) a court, in relation to records in the possession of that court or of a registry of that court.

(4) The Archives may withhold a Commonwealth record or a class of Commonwealth records from public access for a reasonable time pending examination in accordance with section 35.

Consultation with States

32. (1) Where it appears to the Minister that the Government of a State or of the Northern Territory, as the case may be, might reasonably wish to contend that the making available of a record under section 31 could adversely affect the interests of that State or of the Northern Territory, as the case may

be, the record shall not be made available unless there has been consultation between the Commonwealth and that State or the Northern Territory.

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

5

Exempt records

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

- (a) information or matter the disclosure of which under this Act could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth; 10
- (b) information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth, being information or matter the disclosure of which under this Act would constitute a breach of that confidence; 15
- (c) information or matter the disclosure of which under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of a Commonwealth institution and would not, on balance, be in the public interest; 20
- (d) information or matter the disclosure of which under this Act would constitute a breach of confidence;
- (e) information or matter the disclosure of which under this Act would, or could reasonably be expected to— 25
 - (i) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance; 30
 - (ii) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
 - (iii) endanger the life or physical safety of any person; 35
- (f) information or matter the disclosure of which under this Act would, or could reasonably be expected to—
 - (i) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (ii) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or 40

- (iii) prejudice the maintenance or enforcement of lawful methods for the protection of public safety;
- (g) information or matter the disclosure of which under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person);
- (h) information or matter relating to trade secrets, or any other information or matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information or matter were disclosed;
- (j) information or matter (other than information or matter referred to in paragraph (h)) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information or matter the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs.

(2) For the purposes of this Act, a Commonwealth record is an exempt record if it is of such a nature that—

- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; and
- (b) disclosure of the record would be contrary to the public interest.

(3) For the purposes of this Act, a Commonwealth record is an exempt record if—

- (a) it contains information or matter—
 - (i) that relates to the personal affairs, or the business or professional affairs, of any person (including a deceased person); or
 - (ii) that relates to the business, commercial or financial affairs of an organization or undertaking; and
- (b) there is in force a law relating to taxation that applies specifically to information or matter of that kind and prohibits persons referred to in that law from disclosing information or matter of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

(4) In paragraphs (1) (e) and (f) and sub-section (3), “law” means law of the Commonwealth or of a State or Territory.

(5) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, a State or the Northern Territory or by a local government authority.

40 **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) or (b), 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, subject to the operation of this Part, 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).

(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. 5

(3) Where a Minister is satisfied that information as to the existence or non-existence of a record as described in an application for access would, if contained in another record, cause that other record to be an exempt record for the reason that it would contain information or matter of a kind referred to in paragraph 33 (1) (a) or (b), he may sign a certificate to that effect (specifying that reason). 10 15

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

(5) Regulations made in pursuance of sub-section (4) 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 applying to the certificate take effect does not, by reason of the regulations, cease to be in force before the expiration of a period of one year from the date on which the regulations take effect. 20

(6) Notwithstanding sub-section (4) 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. 25

(7) Where a certificate under this section is in force in respect of a record, the record is not subject to examination under section 35. 30

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

- (a) the Permanent Head of a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth; 35
- (b) the person holding, in relation to a Commonwealth institution that is a prescribed authority for the purposes of the *Freedom of Information Act 1982*, an office by virtue of which he would, for the purposes of that Act, be the principal officer in respect of that Commonwealth institution; 40
- (c) the person holding, in relation to a Commonwealth institution that is not a prescribed authority for the purposes of the *Freedom of Information Act 1982*, an office declared by the regulations to be the relevant office in respect of that Commonwealth institution; or

(d) a person performing the duties of an office referred to in paragraph (a), (b) or (c).

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

(10) A delegation by a Minister under sub-section (8) does not prevent the exercise of a power by the Minister.

Identification of exempt records

10 35. (1) The Director-General, in consultation with the responsible Minister or a person authorized by the responsible Minister, shall make arrangements for determining the Commonwealth records in the open access period that are to be treated by the Archives as being exempt records and may make arrangements for determining the extent to which access in part to Commonwealth records identified as exempt records may be given without disclosing the information or matter by reason of which the records are exempt records.

20 (2) Except in the case of records exempted from transfer to the custody of Archives by virtue of a determination under section 29, an examination of records for the purposes of sub-section (1) shall be conducted on premises of the Archives.

(3) The identification of records as exempt records in accordance with this section shall be conducted in accordance with programs approved by the Director-General and may take place before the records concerned become records in the open access period.

25 (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 the records concerned and any other relevant circumstances and whenever necessary for the purposes of reconsideration of a decision in accordance with section 42.

30 (5) The functions of the Archives with respect to public access to Commonwealth records in the open access period shall be performed in conformity with the determinations made from time to time under this section, except to the extent that any such determination is inconsistent with a decision of the Tribunal on a review under this Act.

Forms of access

35 36. (1) Where the Archives is required by this Part to cause a record to be made available for public access, any person is, subject to this Part, entitled to access to the record.

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

(a) a reasonable opportunity to inspect the record;

- (b) on payment of a charge determined in accordance with the regulations, provision to the person of a copy of the record;
- (c) in the case of a record from which information or matter can be produced or made available in a particular form by means of a computer, projector or other equipment, provision, on payment of a charge determined in accordance with the regulations, of access to that information or matter by the use of that equipment; 5
- (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. 10
- (3) Subject to sub-section (4), where a person has applied for access in a particular form, access shall be given in that form. 15
- (4) Where the giving of access under this Part in the form requested by the person in his application for access—
- (a) would interfere unreasonably with the operations of the Archives or of another Commonwealth institution that has the custody of the record;
- (b) would not, having regard to the physical nature of the record, be appropriate; 20
- (c) would be detrimental to the preservation of the record; or
- (d) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, a Commonwealth institution, a State or the Northern Territory) subsisting in matter contained in the record, being matter that does not relate to the affairs of a Commonwealth institution, 25
- access in that form may be refused and access given in another form.

Conditions in respect of proper care of records

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. 30

(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. 35

Access to part of exempt record

38. Where a record that would otherwise be required to be made available for public access under this Part is an exempt record, the Archives may, where it is reasonably practicable to do so, make arrangements for part of, or a copy of part of, that record to which access could be given without disclosing 40

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

Information as to existence of certain documents

5 **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), (b) or (e).

10 **(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—

15 (a) section 40 applies as if the decision to give such a notice were a decision referred to in that section; and

20 (b) the decision to give the notice shall, for the purposes of Division 4, be deemed to be a decision of the Archives refusing to grant the applicant access to the record on the ground that the record is an exempt record under paragraph 33 (1) (a), (b) or (e), as the case may be.

Notification of decisions

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 31, being an application—

25 (a) in writing;

(b) expressed to be made in accordance with this section;

(c) specifying an address in Australia at which notices under this Act may be sent to the person making the application; and

30 (d) providing such particulars, if any, concerning the record to which it relates as are contained in the Australian National Guide to Archival Material.

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

35 **(3)** Where an application to which this section applies is made, the Archives shall take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable but in any case not later than 90 days after the day on which the application is received by the Archives.

40 **(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.

(5) Where, in relation to an application, a decision is made relating to a refusal to grant access to a record in accordance with the application, the

decision-maker shall cause the applicant to be given notice in writing of the decision and the notice shall—

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; 5
- (b) where the decision is a decision of the Archives—state the name and designation of the person making the decision; and
- (c) give to the applicant appropriate information concerning—
 - (i) his rights with respect to a review of the decision;
 - (ii) his rights to make a complaint to the Ombudsman in relation to the decision; and 10
 - (iii) the procedure for the exercise of the rights referred to in sub-paragraphs (i) and (ii), including (where applicable) particulars of the manner in which an application for review under section 42 may be made. 15

(6) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision of the kind referred to in sub-section (5).

(7) A notice under sub-section (5) is not required to contain any matter that is of such a nature that its inclusion in a record would cause that record to be an exempt record under section 33. 20

- (8) Where—
 - (a) an application to which this section applies has been made;
 - (b) the period of 90 days, or such other period as is applicable in accordance with regulations under sub-section (4), has elapsed since the day on which the application was received by the Archives; and 25
 - (c) notice of a decision on the application has not been received by the applicant,

the Archives shall, for the purpose of enabling an application to be made to the Tribunal under section 43, be deemed to have made, on the last day of that period, a decision refusing to grant access to the record on the ground that the record is an exempt record. 30

(9) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning failure to make and notify to the applicant a decision on an application (whether the complaint was made before or after the expiration of the period referred to in sub-section (8)), an application to the Tribunal under section 43 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*. 35

(10) Where such a complaint is made before the expiration of the period referred to in sub-section (8), 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, 40

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

5 (11) Where, after an application has been made to the Tribunal by virtue of sub-section (8) but before the Tribunal has finally dealt with the application, a decision in the matter to which the application relates is given by the Archives, being a decision that is not satisfactory to the applicant, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a
10 review of that decision in accordance with this Part.

(12) Before dealing further with an application made to it by virtue of sub-section (8), the Tribunal may, on the application of the Director-General, allow further time to the Archives to deal with the application for access.

Division 4—Review of Decisions

15 Interpretation

41. For the purposes of this Division, unless the contrary intention appears, a certificate given under sub-section 34 (3) in respect of a record as described in an application for access shall be deemed to be a certificate given in respect of the record so described notwithstanding that the certificate does not
20 acknowledge the existence or non-existence of the record so described.

Internal reconsideration of decisions

42. (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
25 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—

- 30 (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).

35 (3) A decision by the Archives on an application in accordance with this section for reconsideration of a decision shall be made after consideration of the application by the Director-General or a person authorized by him to deal with such applications.

40 (4) The provisions of section 40 extend to a decision made under this section upon a review of a decision in relation to the provision of access to a record that is the subject of an application under that section.

Applications to Administrative Appeals Tribunal

43. (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of a decision of the Archives in respect of access to a record, being—

- (a) a decision refusing to grant to the applicant access to the record on the ground that the record is an exempt record or is a Commonwealth record to which Division 3 does not apply; 5
- (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; 10
- (c) a decision refusing to grant to the applicant access to the record in a particular form by reason of paragraph 36 (4) (a), (b) or (d); or
- (d) a decision refusing to allow a further period for making an application under sub-section 42 (1) for a reconsideration of a decision. 15

(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 42 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. 20

(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 42 for a reconsideration of the decision; 25
- (b) a period of 14 days has elapsed since the day on which that application was received by the Archives; 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. 30

(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— 35

- (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant and ending on the sixtieth day after that day;
- (b) where the decision is a decision that is deemed by sub-section 40 (8) or (10) to have been made—the period commencing on the day on which the decision is deemed to have been made and ending on the sixtieth day after that day; or 40

(c) where sub-section 55 (4) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that sub-section and ending on the sixtieth day after that day.

5 (5) If an application to the Tribunal for review of a decision is made before a reconsideration of the decision in accordance with section 42 has been completed and the result notified to the applicant, the Tribunal may, if it is satisfied that further time is reasonably necessary to enable the reconsideration to be completed, adjourn the proceedings for such time as it thinks fit.

10 (6) Section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a decision in respect of which an application may be made to the Tribunal under this section where a notice under sub-section 40 (5) of this Act has been given to the applicant.

15 (7) If the Tribunal, upon application for a declaration under this sub-section made to it by a person to whom a notice has been furnished under sub-section 40 (5), considers that the notice does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision to which the notice relates, the Tribunal may make a declaration accordingly, and, where the Tribunal makes
20 such a declaration, the person responsible for furnishing the notice shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, furnish to the applicant an additional notice or additional notices containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or
25 those reasons.

Powers of Tribunal

30 44. (1) Subject to this section, in proceedings under this Division, the Tribunal has, in addition to any other power, the power to review any decision of the Archives upon an application for access to a record and to decide any matter in relation to that application that, under this Act, could have been or could be decided by the Archives, and any decision of the Tribunal under this section has the same effect as a decision of the Archives.

35 (2) Where, in proceedings before the Tribunal in pursuance of an application under section 43, it is established that a record is an exempt record, the Tribunal does not, except as provided by sub-section (4), have power to decide that access is to be granted to the record.

40 (3) Where there is in force in respect of a record a certificate under section 34, the powers of the Tribunal do not extend to reviewing the decision to give the certificate but the Tribunal, constituted in accordance with section 46, may determine such question in relation to that certificate as is provided for in whichever of sub-sections (4) and (5) applies in relation to that certificate.

(4) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a record in accordance with an application

under section 40, being a record that is claimed to be an exempt record under paragraph 33 (1) (a) or (b) and in respect of which a certificate is in force under sub-section 34 (1), the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for that claim.

(5) Where application is or has been made to the Tribunal for the review of a decision refusing to grant access to a record in accordance with an application under section 40, being a record in respect of which a certificate is in force under sub-section 34 (3), the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim that information as to the existence or non-existence of the record would, if contained in another record, cause that other record to be an exempt record for the reason that it would contain information or matter of a kind referred to in paragraph 33 (1) (a) or (b). 5
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(6) On a review in pursuance of an application to the Tribunal under section 43, the Tribunal may, if it is satisfied that it would be practicable to give access to, or to a copy of, part of an exempt record in a form that would not disclose information or matter by reason of which the record is an exempt record, direct that access be given accordingly. 15

Proceedings upon exercise of powers under sub-section 44 (4) or (5)

45. (1) Where, in considering a question referred to in sub-section 44 (4) or (5) in relation to a record in respect of which a certificate has been given, the Tribunal determines that there do not exist reasonable grounds for the claim to which the question relates, the appropriate Minister shall, not later than 28 days after the determination of the Tribunal is communicated to him, make a decision— 20
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- (a) to revoke the certificate; or
- (b) not to revoke the certificate.

(2) Where a Minister makes a decision under sub-section (1) to revoke a certificate—

- (a) in a case where the certificate was given under sub-section 34 (1)—the claim that the record to which the certificate relates is an exempt record shall be taken, for the purposes of this Act, to have been withdrawn; and 30
- (b) in a case where the certificate was given under sub-section 34 (3)—the Minister shall, forthwith upon the revocation of the certificate, inform the applicant of the existence or non-existence of the record to which the certificate relates. 35

(3) Where a Minister makes a decision under sub-section (1) not to revoke a certificate, he shall—

- (a) cause notice in writing of the decision to be furnished to the applicant forthwith; and 40
- (b) cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is so furnished.

(4) A notice under sub-section (3) shall state the findings of the Minister giving the notice on any material question of fact, the material on which those findings were based, and the reasons for the decision.

5 (5) A Minister is not required to include in a notice under sub-section (3) matter that is of such a nature that its inclusion in another record would cause that other record to be an exempt record under section 33.

10 (6) A Minister is not required to include in a notice under sub-section (3) information as to the existence or non-existence of a record or the existence or non-existence of a state of fact if that information would, if included in another record, cause that other record to be an exempt record under section 33.

(7) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision of the Minister under this section.

15 (8) Nothing in this section shall be taken to imply that a certificate under section 34 may not be revoked otherwise than in pursuance of a decision under sub-section (1).

(9) For the purposes of this section, “appropriate Minister”, in relation to a record in respect of which a certificate has been given under section 34, means the Minister who gave, or whose delegate gave, the certificate.

20 **Constitution of Tribunal for purposes of proceedings under sub-section 44 (4) or (5)**

46. (1) Where a request is made to the Tribunal in accordance with sub-section 44 (4) or (5), the Tribunal shall be constituted in accordance with sub-section (2) for the purposes of any proceeding for the determination of the question to which the request relates.

25 (2) For the purposes of a proceeding referred to in sub-section (1), the Tribunal shall be constituted by—

- (a) 3 presidential members; or
- (b) a presidential member alone.

30 (3) In its application to a proceeding referred to in sub-section (1), section 21A of the *Administrative Appeals Tribunal Act 1975* applies as if—

- (a) sub-section (1) of that section were omitted and the following sub-section substituted:

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

- (b) sub-section (3) of that section were omitted and the following sub-section substituted:

40 “(3) The President may, after taking the submissions into account, if he considers that the matters to which the proceeding relates are of

such public importance as to justify him in so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that the Tribunal is constituted by 3 presidential members.”.

(4) In its application to a proceeding referred to in sub-section (1), section 22 of the *Administrative Appeals Tribunal Act 1975* applies as if there were inserted after paragraph (1) (aa) of that section the following paragraphs: 5

“(ab) if the Tribunal is constituted by presidential members of whom at least 2 are Judges and none of whom is the President—the senior Judge shall preside; 10

(ac) if the Tribunal is constituted by presidential members none of whom is a Judge—one of those presidential members who is directed by the President to do so shall preside;”.

Hearing of certain proceedings before the Tribunal

47. (1) This section has effect notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*. 15

(2) At the hearing of a proceeding referred to in sub-section 46 (1), the Tribunal—

(a) shall hold in private the hearing of any part of the proceeding during which evidence or information is given, or a record or other document is produced, to the Tribunal by— 20

(i) a Commonwealth institution or an officer of a Commonwealth institution;

(ii) a Minister or a member of the staff of a Minister; or

(iii) a member, an officer, or a member of the staff, of a body referred to in sub-section 29 (8), 25

or during which a submission is made to the Tribunal by or on behalf of a Commonwealth institution or a Minister, being a submission in relation to the claim—

(iv) in the case of a record in respect of which there is in force a certificate under sub-section 34 (1)—that the record is an exempt record; and 30

(v) in the case where a certificate is in force under sub-section 34 (3)—that information as to the existence or non-existence of a record as described in an application would, if contained in another record, cause that other record to be an exempt record for the reason that it would contain information or matter of a kind referred to in paragraph 33 (1) (a) or (b); and 35

(b) subject to sub-section (4), shall hold the hearing of any other part of the proceeding in public. 40

(3) Where the hearing of any part of a proceeding is held in private in accordance with sub-section (2), the Tribunal—

(a) may, by order, give directions as to the persons who may be present at that hearing; and

(b) shall give directions prohibiting the publication of—

(i) any evidence or information given to the Tribunal;

(ii) the contents of any records or other documents lodged with, or received in evidence by, the Tribunal; and

(iii) any submission made to the Tribunal,

at that hearing.

(4) Where, in relation to a proceeding referred to in sub-section 46 (1), the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, information or matter or for any other reason, the Tribunal may, by order—

(a) direct that the hearing of a part of the proceeding that, but for this sub-section, would be held in public shall take place in private and give directions as to the persons who may be present at that hearing;

(b) give directions prohibiting or restricting the publication of—

(i) the contents of any record or other document lodged with the Tribunal in relation to the proceeding; or

(ii) any evidence or information given to the Tribunal, the contents of any record or other document received in evidence by the Tribunal, or any submission made to the Tribunal, in relation to the proceeding otherwise than at a hearing held in private in accordance with sub-section (2); or

(c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given before the Tribunal, or the contents of a record or other document lodged with, or received in evidence by, the Tribunal, in relation to the proceeding.

(5) A direction given by the Tribunal under paragraph (3) (b) or (4) (b) does not prevent a person referred to in sub-paragraph (2) (a) (i), (ii) or (iii) from disclosing, in the course of the performance of his duties, any matter to any other person.

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

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

“(1) A question of law (including the question whether a particular question is one of law) arising in a proceeding before the Tribunal constituted

in accordance with sub-section 46 (2) of the *Archives Act 1983* by 3 presidential members shall—

- (a) in a case where one only of those members is a Judge—be decided according to the opinion of that member; and
- (b) in a case where 2 of those members are Judges—be decided according to the opinion of the majority.”. 5

Production to the Tribunal of records in relation to which a certificate has been issued

49. (1) In any proceedings before the Tribunal under this Act in relation to a record in respect of which there is in force a certificate under section 34 the Tribunal is entitled to require the production of the record in accordance with this section and not otherwise. 10

(2) Where, in considering a question referred to in sub-section 44 (4) or (5) in relation to a record, the Tribunal is not satisfied, by evidence on affidavit or otherwise, that there exist reasonable grounds for the claim to which the question relates, the Tribunal may require the record to be produced for inspection by the Tribunal as constituted for the purposes of the proceeding. 15

(3) After an inspection of the record referred to in sub-section (2), the Tribunal shall return the record to the person by whom it was produced without permitting any person who is not 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 record or disclosing the contents of the record to any such person. 20

Parties 25

50. For the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in respect of proceedings under this Part—

- (a) a decision given by the Archives shall be deemed to have been given by the Director-General; and 30
- (b) in proceedings for the determination of a question referred to in sub-section 44 (4) or (5) in relation to a record, the Minister who is the appropriate Minister for the purposes of section 45 in relation to the record shall, upon application to the Tribunal, be entitled to be a party to the proceedings. 35

Onus

51. In proceedings before the Tribunal in pursuance of an application under section 43—

- (a) the Archives has the onus of establishing that a decision given by the Archives was justified or that the Tribunal should give a decision adverse to the applicant; and 40
- (b) the Tribunal is not restricted by any determination made at any time under section 35.

Tribunal to ensure non-disclosure of certain matters

5 **52. (1)** In proceedings before the Tribunal in pursuance of an application under section 43, other than proceedings referred to in sub-section 46 (1), 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, being matter by reason of which the record is an exempt record; or

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

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

15 (a) the Tribunal shall not, in its decision, or reasons for a decision, in a matter arising under this Act, include any matter or information of a kind referred to in sub-section (1); and

(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 (1).

20 Production of exempt records

53. (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.

(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.

(3) Notwithstanding sub-sections (1) and (2), but subject to sub-section (4), the Tribunal is not empowered, in any proceedings other than proceedings to determine a question referred to in sub-section 44 (4) or (5), to require—

- (a) the production of a record in respect of which a certificate is in force under sub-section 34 (1); or 5
- (b) the giving of information in respect of which a certificate is in force under sub-section 34 (3).

(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 34 (2), sub-section (3) does not prevent the Tribunal from requiring the production, in any 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. 10

(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 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. 15 20

Evidence of certificates

54. In proceedings before the Tribunal under this Division in pursuance of an application under section 43, evidence of a certificate under section 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 a record to which the certificate relates. 25

Complaints to Ombudsman

55. (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 that Act in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal. 30 35

(2) For the purposes of the *Ombudsman Act 1976*, action taken by the Archives in respect of an application made to the Archives in relation to access to a record is declared to be action taken by the Archives in relation to a matter of administration.

(3) A reference in sub-section (2) to action taken by the Archives shall be read as a reference to all such actions as would, for the purposes of the *Ombudsman Act 1976*, be treated as being action taken by the Archives. 40

5 (4) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning a decision under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of that Act.

(5) Notwithstanding anything contained in the *Ombudsman Act 1976*, a report under that Act in respect of a complaint arising out of an application under this Act shall not contain information of the kind referred to in sub-section 39 (1) of this Act.

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Division 5—Miscellaneous

Arrangements for accelerated or special access

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

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(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.

(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: \$2,000.

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(4) An arrangement approved by the Prime Minister under sub-section (2) shall be recorded in writing, and the Minister shall cause a copy of the arrangement to be made available to the Council.

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(5) The Minister shall, not later than 3 months after the commencement of this Part and thereafter at intervals of not more than 3 months, cause to be made available to the Council a statement setting out particulars of—

(a) each request for access to a document under sub-section (2) that is made during the period to which the statement relates; and

(b) the decision of the Minister or authorized person in relation to each such request,

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not being a statement that would reveal the identity of the person who made the request.

Protection against certain actions

57. (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 Part to be made available for public access—

- (a) no action for defamation, breach of confidence or infringement of copyright lies, by reason of the authorizing or giving of the access, against the Commonwealth or any person concerned in the authorizing or giving of the access; 5
- (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 10
- (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. 15

(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. 20

Access to records apart from Act

58. 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. 25

Security classifications

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

Transitional provisions relating to access 30

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

PART VI—OBJECTS OF ARCHIVAL SIGNIFICANCE**Declaration of objects of archival significance**

61. (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 40

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*,
5 declare the object, or every such object, to be an object to which this section applies.

(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
10 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.

(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.

15 Penalty: \$2,000.

Samples of material for Archives

62. (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.

20 (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.

25 (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.

30 (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.

PART VII—CARE OF MATERIAL OF THE ARCHIVES

Location of material of the Archives

35 63. (1) Subject to this Part, material of the Archives shall be kept at such places as the Director-General considers appropriate.

(2) In considering the places at which material of the Archives should be kept, the Director-General shall take into account—

- (a) the convenience of persons who are likely to require access to the material;
- (b) the desirability of keeping related material in the same place; and 5
- (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. 10

Custody of material of the Archives other than by Archives

64. (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. 15

(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. 20

PART VIII—REGISTERS AND GUIDE RELATING TO ARCHIVES

Australian National Register of Records

65. (1) The Archives shall maintain a register to be known as the Australian National Register of Records. 25

(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— 30

- (a) current Commonwealth records;
- (b) material in State archives;
- (c) material in other archives, including private archives; and
- (d) other archival resources relating to Australia.

(4) For the purposes of this section, the Archives shall seek the co-operation of the owners and custodians of material in State archives and other archives. 35

Australian National Guide to Archival Material

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

5 (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

10 (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—

15 (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.

20 (5) A copy of the Guide shall be kept at the principal office of the Archives in each State and Territory in which the Archives maintains an office and may be kept at such other offices of the Archives as the Director-General considers appropriate.

(6) A person may inspect the Guide and is entitled, on the payment of the prescribed charge (if any), to receive a copy of an entry in the Guide.

25 Australian National Register of Research Involving Archives

30 67. (1) The Archives shall establish and maintain a register to be known as the Australian National Register of Research Involving Archives in which the Archives shall endeavour to list all research that is being, or has been, conducted in or in relation to Australia and has involved, or will involve, the use of archival material.

(2) For the purposes of 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.

35 (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.

40 (4) A person may inspect the Register and is entitled, on the payment of the prescribed charge (if any), to receive a copy of an entry in the Register.

PART IX—MISCELLANEOUS

Annual Report

68. (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. 5

(2) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report concerning the proceedings of the Council during the 12 months ending on that date.

(3) The first report under 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. 10

(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. 15

Certified copies of records

69. (1) The Director-General may give a certificate that a record referred to in the certificate is a true copy of a record that is in the custody of the Archives and such a certificate is *prima facie* evidence in all courts of the matters stated in the certificate. 20

(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.

Transitional

70. (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. 25
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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.

(3) Where, immediately before the commencement of Part II, any records were in the custody of the establishment known as the Australian Archives, as existing at that time, under arrangements by which the custody of the records was accepted from a person other than a Commonwealth institution by the Commonwealth, or by an authority or person acting on behalf of the Commonwealth, those arrangements (including any provision of those arrangements concerning access to or disposal of those records) have effect 35
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from that commencement as if they were made, after that commencement, by that person with the Archives, and sub-section 6 (2) applies accordingly.

Regulations

- 5 **71.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,
- 10 including, but without limiting the generality of the foregoing, regulations making provision for or in relation to the making of, or the requiring of deposits on account of, charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of—
- (c) searches carried out to comply with applications made for access to, or for information contained in, records;
 - 15 (d) the provision of copies or transcripts of records in pursuance of applications made in accordance with this Act; and
 - (e) the keeping of records that do not form part of the archival resources of the Commonwealth.



