

Compendium of information access laws across Australian states and territories

October 2017

	Commonwealth	NSW	NT	QLD	SA	TAS	VIC	WA
LEGISLATION	<p><i>Freedom of Information Act 1982 (Cth) (FOI Act)</i></p> <p><i>Australian Information Commissioner Act 2010 (Cth) (AIC Act)</i></p>	<p><i>Government Information (Public Access) Act 2009 (NSW)</i></p> <p><i>Government Information (Information Commissioner) Act 2009 (NSW)</i></p>	<p><i>Information Act 2003 (NT)</i></p>	<p><i>Right to Information Act 2009 (QLD)</i></p>	<p><i>Freedom of Information Act 1991 (SA)</i></p>	<p><i>Right to Information Act 2009 (TAS)</i></p>	<p><i>Freedom of Information Act 1982 (VIC)</i></p>	<p><i>Freedom of Information Act 1992 (WA)</i></p>
OBJECTS	<p>To give the Australian community access to information held by the Government of the Commonwealth, by:</p> <ul style="list-style-type: none"> requiring agencies to publish the information; and providing for a right of access to documents. 	<p>Open government information to be public by:</p> <ul style="list-style-type: none"> authorising and encouraging the proactive release of information by NSW agencies; giving members of the public a legally enforceable right to access government information; and ensuring that access to government information is restricted only when there is an overriding 	<p>Contains general principle of accountability for government information – states that public sector organisations are required to:</p> <ul style="list-style-type: none"> make available to the public such government information as is reasonably possible; provide government information to the public promptly; and 	<p>Provides right of access unless contrary to the public interest.</p>	<p>Unqualified objects clause, followed by statement that the means by which the objects are to be achieved includes ‘conferring on each member of the public and on MPs a legally enforceable right to ... access .., subject only to such restrictions as are consistent with the public interest (including maintenance of the effective</p>	<p>Unqualified right of access to documents.</p>	<p>General right of access - limited only by exceptions and exemptions necessary for protection of essential public interests and private and business affairs of persons whose information is collected and held by agencies.</p>	<p>To enable the public to participate more effectively in governing the State (s3(1)(a))</p> <p>To make the persons and bodies that are responsible for State and local government more accountable to the public (s3(1)(b))</p>

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		<p>public interest against releasing that information.</p> <p>(s3)</p>	<ul style="list-style-type: none"> assist the public to ensure that personal information is accurate, complete and up-to-date <p>Act does not prevent/discourage public sector organisations from publishing, or providing access to government information (including exempt information) or correcting personal information, otherwise than under this Act if it is proper to do so or is required or permitted by law to be done</p> <p>But, public sector organisations are not required to provide access to government information if it is not in the public interest to do so.</p>		<p>conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy'.</p> <p>Act states that nothing in the Act is intended to prevent or discourage the publication of documents, the giving of access to documents or the amendment of records otherwise under the Act if it is proper and reasonable to do so or if it is permitted or required by any other Act or law.</p>		<p>Make available to the public, information about the operations of agencies, ensuring rules and practices affecting members of the public are readily available.</p> <p>Facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.</p>	

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SECTORS	<p>Australian Government Agencies</p> <p>Australian Government Ministers (s 11 FOI Act).</p> <p>'Prescribed authority' (s4 FOI Act):</p> <ul style="list-style-type: none"> body corporate or unincorporated body established for a public purpose NBN Co any other body declared by the regulations <p>Norfolk Island (s 4B FOI Act)</p> <p>Restricted application to courts and court registrar (s 5 FOI Act)</p> <p>Restricted application to tribunals (s 6 and sch 1 FOI Act)</p> <p>Restricted application to the Governor-General and Official Secretary to the Governor-General (s 6A FOI Act)</p> <p>An agency if contracted to perform functions or exercise powers of the agency (s 6C FOI Act)</p>	<p>Government agencies</p> <p>Ministers and officers</p> <p>Local councils</p> <p>State owned corporations</p> <p>Contractors through contract arrangements (s121)</p> <p>Universities</p> <p>Public authorities (s4)</p> <p>Courts (s4)</p> <p>Excludes bodies identified in sch 2 (legislative assembly, committee of either or both of these bodies, royal commission, special commission of enquiry are NOT a 'public authority' for the purposes of the NSW Act).</p>	<p>Government departments</p> <p>Government business divisions</p> <p>Person/body declared by the regulations to be a public sector organisation (s5)</p> <p>Appointed or established under an Act (s5)</p> <p>Holding an office under an Act (s5)</p> <p>Local city and town councils, shire councils, agencies</p> <p>Statutory or government owned corporations</p> <p>Contractors</p>	<p>Government department</p> <p>Ministers and staff or consultants (s13)</p> <p>Local Government</p> <p>Government Owned Corporation</p> <p>Subsidiary of a Government Owned Corporation (s14)</p> <p>Public Authority (including universities, hospital and health services)</p> <p>Excluded bodies and particular functions of bodies to which this Act does not apply (s17, Sch 2, part 1 and Sch 2, part 2)</p>	<p>Government ministers</p> <p>Persons who hold offices established by an Act</p> <p>Administrative units of the Public Service</p> <p>SA Police</p> <p>Councils</p> <p>Bodies established or continued in existence for a public purpose by an Act; bodies subject to control or direction by the Governor, a Minister or other instrumentality or agency of the Crown or a council, regional and council development assessment panels.</p>	<p>State Government agencies</p> <p>Ministers</p> <p>Local Government</p> <p>Statutory Authorities</p> <p>State and Council owned companies</p> <p>Public Authorities including Tasmania Police and the University of Tasmania</p> <p>Excludes certain persons and bodies (s6)</p> <p>Specifies that information in the possession of a Minister which does not relate to the Minister's official business is</p>	<p>Government agencies incl. Departments</p> <p>Local councils</p> <p>Universities</p> <p>Police</p> <p>'Prescribed authority'</p> <p>= body corporate established for a public purpose per the Act or body unincorporated by the Governor in Council or by a Minister</p> <p>= any other body, whether incorporated or unincorporated, declared by the regulations</p> <p>Blanket exemption for <i>documents</i> created by the Bureau of Criminal Intelligence</p>	<p>Most state government, agencies, including departments, authorities, boards and commissions</p> <p>Ministers</p> <p>All local government agencies</p> <p>Public universities</p> <p>Private sector providers of custodial services including prisons and prisoner transport (Glossary)</p> <p>Some agencies, or parts of agencies, are specifically exempt (Schedule 2)</p>

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	<p>Note:</p> <p>Excludes certain persons and bodies (s 7 and sch 2 FOI Act)</p> <p>Documents to which access is not able to be obtained (s 12 FOI Act)</p> <p>No access to documents of certain institutions (s 13 FOI Act)</p>		<p>Courts or tribunals other than judicial functions and decision-making functions</p> <p>NT police force</p>		<p>Act does not apply to Parliament or parliamentary committees (s 5A), nor to the judicial functions of courts and tribunals (s 6).</p> <p>Some agencies are specifically exempt. Certain information held or compiled by non-exempt agencies is specifically exempt. (Schedule 2 to the Act and <i>Freedom of Information (Exempt Agency) Regulations 2008</i>).</p>	<p>exempt (s28)</p>	<p>Act does not apply to documents in the possession of the VIC FOI Commissioner or their office relating to a review of a decision or a complaint</p>	
JURISDICTION	<p>Right of amendment or annotation (ss 48, 50 FOI Act).</p> <p>Internal review decision (ss 53A, 53B FOI Act).</p> <p>Australian Information Commissioner review of agency and Minister's decisions (Part VII FOI Act).</p> <p>Complaints and own motion investigations (s 69 FOI Act).</p>	<p>Reviewable decisions (s80)</p> <p>Complaints (s17 GIIC)</p> <p>Investigation of agency systems, policies and practices (s21 GIIC)</p>			<p>Right to internal review of original determination (unless original determination made by or at the direction of the principal officer of the agency). (s 29(6))</p> <p>Right to seek amendment of agency records (s 30). Right to seek</p>	<p>External merits review of decisions (s44)</p> <p>Other applications for review in certain circumstances including sufficiency of search and deemed refusal (ss45 & 46)</p>	<p>Review decisions made by Agencies (s49A)</p> <p>Cannot review decisions of Ministers or Principal Officers, appeal straight to VCAT on those.</p> <p>Investigate Complaints (s61A)</p>	

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	<p>Vexatious applicant declarations (s 89K FOI Act).</p> <p>Merits review/appeal to the Administrative Appeals Tribunal (s 57A FOI Act).</p> <p>Appeal on a question of law to the Federal Court of Australia (s 56 FOI Act).</p>				<p>annotation if amendment is not made (s 37).</p> <p>Agency may refuse to deal with application if it is part of a pattern of conduct that amounts to abuse of right of access or is made for a purpose other than to obtain access to information. (s 18(2a)).</p> <p>Right to external review by the Ombudsman. (s 39).</p> <p>Merits review to the SA Civil and Administrative Tribunal (SACAT). (Agencies may only seek review on a question of law.) (s 40).</p>	<p>Appeal to Supreme Court on a question of law</p>	<p>Monitor compliance with professional standards (if any) prescribed by the Regs (s6C)</p> <p>Report on operation of FOIA (s64)</p>	
PUBLICATION	<ul style="list-style-type: none"> Require information publication scheme (Part II, Div 2 FOI Act) 	<p>Requires mandatory proactive release of 'open access information' (s6, s18) including:</p>	<ul style="list-style-type: none"> Publication of specified information (s11) 	<ul style="list-style-type: none"> Requirement for policy documents to be publicly available and a publication scheme to set 	<ul style="list-style-type: none"> Publication of specified information (s9) 	<ul style="list-style-type: none"> Promotes the proactive release of information by public authorities and Ministers 	<ul style="list-style-type: none"> Publication of specified information (s7) 	<ul style="list-style-type: none"> Publication of specified information (ss94, 96)

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		<ul style="list-style-type: none"> an agency information guide; certain information tabled in Parliament; agency's disclosure log of its access applications; register of government contracts; and record of information not made available. <p>Additional open access requirements (GIPA Regulation, cl 5) for:</p> <ul style="list-style-type: none"> Ministers; Government Departments; Statutory bodies; and Local councils. 		<p>out the classes of information available and the terms on which they are available, including charges</p> <ul style="list-style-type: none"> Scheme must comply with the ministerial guidelines – guidelines set out the classes of information to be published, as well as the operational requirements of publication, including easy access through a website and regular review <p>Makes distinction b/w requirements for disclosure logs of depts. and Ministers and those of other agencies (requirements per s78</p>		<p>and provides for 4 types of disclosure, incl. required and routine disclosure</p> <ul style="list-style-type: none"> Information disclosure policy is required Processes in place must comply with the guidelines issues by the Ombudsman (s49) 		
OVERSIGHT		Joint Parliamentary Committee (s44 GIIC)		Legal Affairs and Community Safety Committee (s189)	Crime and Public Integrity Policy Committee	Joint Standing Committee on Integrity	Accountability & Oversight Committee of Parliament	
FUNCTIONS AND ROLE	Information Commissioner,	Promote public	Promote public	Promote greater	Relevant review	Conduct	Promote agencies'	Ensure the

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OF INFORMATION COMMISSIONER	<p>FOI and Privacy functions (under the FOI Act and Privacy Act 1988, AIC Act s 8, 9 and 10).</p> <p>Information Commissioner functions - Report to the Minister on any matter that relates to the Commonwealth Government's policy and practice regarding information held by the Government and systems (s 7 AIC Act)</p> <p>Freedom of Information Commissioner functions (s8 FOI):</p> <ul style="list-style-type: none"> • promote public awareness of Act objects; • assist agencies to publish information; • provide information, advice, assistance and training; • issue guidelines; • make reports and recommendations to Minister re legislative change or administrative action; • monitoring, investigating and reporting on agency compliance; • review decisions; • investigations; • collect information/statistics about FOI matters for s30 	<p>awareness and objects of Act (s17)</p> <p>Produce annual reports (s36 GIIC)</p> <p>Report following investigation – to Minister, principal officer, Secretary DPC (s24 GIIC)</p> <p>Provide information, advice, assistance and training to agencies (s17).</p> <p>Assist agencies including services to assist with lodgement, handling and processing of applications (s17)</p> <p>Issue guidelines and publications to assist agencies and the public (s17)</p> <p>Review decisions of agencies and monitor, audit and report on the exercise by</p>	<p>awareness of Act objects</p> <p>Produce annual reports</p> <p>Produce special reports at the direction of the Minister</p> <p>Develop and issue guidelines about FOI access and correction and privacy for public sector</p> <p>Provide training and advice on the provisions of the Act</p> <p>Assess proposed legislation and relevant policies</p> <p>Conduct audits of records held by PSOs for compliance</p> <p>Research and monitor FOI and privacy developments</p>	<p>awareness of operation of the Act</p> <p>Provide guidance on interpretation and administration of Act</p> <p>Provide information and assistance to agencies, applicants and third parties with access applications</p> <p>Monitoring application of the public interest test</p> <p>Commissioning external research and surveys to monitor achievement of the Act's stated objectives</p> <p>Identifying and commenting on legislative and administrative changes to improve administration of</p>	<p>authority in relation to determinations made under the FOI Act (s39(1))</p> <p>Ombudsman must make annual report on work of his office to be laid before both Houses of Parliament (s 29 of <i>Ombudsman Act 1972.</i>)</p> <p>Minister administering the Act must make an annual report to Parliament (s54)</p> <p>Minister administering the Act must, in consultation with the Ombudsman, develop and maintain appropriate training programs to assist agencies in complying with this Act (s54A)</p> <p>State Records of South Australia</p>	<p>independent, external merits review of agency decisions.</p> <p>Issue guidelines and manual and provide advice to public authorities on the process of disclosure and in relation to the operation of the Act generally (s49)</p> <p>Provide training on the operation of the Act</p>	<p>understanding and acceptance of the Act and the objects of the Act (s6C)</p> <p>Report annually on operation of the Act (s64)</p> <p>Provide advice, recommendations to Minister, if requested (s6C)</p> <p>Conduct reviews (s49A)</p> <p>Investigate complaints (s61A)</p> <p>Provide advice, education and guidance to agencies in relation to compliance with any professional standards</p> <p>Monitor compliance with professional standards</p> <p>Provide advice, education to</p>	<p>public are aware of their rights</p> <p>Provide independent external review of decisions made by agencies on access applications and requests to amend personal information under the Act (s63(1))</p> <p>Ensure agencies are aware of their responsibilities (s63(2))</p>

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	<p>annual report; and</p> <ul style="list-style-type: none"> • other functions conferred on the Information Commissioner by the FOI Act or other legislation (s8 and 11 AIC Act) <p>Information Commissioner functions in relation to the review of the information publication scheme (s 8F FOI Act)</p>	<p>agencies of their functions under, and compliance with, the Act (s17)</p> <p>Provide reports and recommendations to the Minister (s17)</p> <p>Receive notice, issue guidelines and models in connection with agency information guides (s22)</p> <p>GIIC or other Acts (s14 GIIC and agency head GSE; PFA Act)</p> <p>Produce reports annually on operation of GIPA (s37 GIIC)</p> <p>Special report to Parliament (s38)</p>	<p>elsewhere</p> <p>Make public statements about relevant FOI and privacy matters</p> <p>Deal with FOI and privacy complaints</p> <p>Grant s81 & 81A authorisations to collect, use or disclose info in a manner inconsistent with or contravene IPPs</p> <p>Approve by gazettal a Code of Practice (s73)</p> <p>Serve PSOs with a compliance notice (s82)</p>	<p>the Act</p> <p>Decide applications for extensions of time; Decide applications for financial hardship; Making varying or revoking declarations under s114 and s115 (s129)</p> <p>External review functions - investigating and reviewing decisions of agencies and Ministers (s130)</p> <p>Performance monitoring functions - including reviewing and reporting on agencies compliance with the RTI and IP Act; Issue guidelines (s132)</p> <p>Report to Parliament on matters relating to</p>	<p>assists the Minister to administer the legislation (general advice, drafting policy, guidelines, information sheets, training government agencies)</p>		<p>agencies in relation to the Commissioner's functions (s6C)</p> <p>Report to oversight committee if 4 or more FOIC decisions overturned by Tribunal or Supreme Court in any 12 month period (s64A)</p>	

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				a particular external review Report on operations of the OIC (s184)				
POWERS OF COMPULSION AND PROCEDURES	<p>Informal and lowest reasonable cost objective (FOI Act objects s 3, procedures s 55).</p> <p>Conduct an IC review in whatever way the Commissioner considers appropriate (s 55(2)(a) FOI Act).</p> <p>Give notice to require the agency or Minister to provide an adequate statement of reasons pursuant to s 26(1) FOI Act (s 55E FOI Act)</p> <p>Give notice for a person to give information of a kind specified in the notice or to produce document/s specified by the notice (ss 55R, 55S FOI Act)</p> <p>Require a principal officer of an agency to produce documents that are claimed to be exempt (s 55T FOI Act)</p> <p>May only require the principal officer of an agency or a</p>	<p>General procedures, informality, substantial merits, determine procedures, not bound by rules of evidence (s15 GIIC)</p> <p>Dealing with a complaint: information; discussions; facilitate direct resolution; investigation (s19 GIIC)</p> <p>Require an agency to produce information, records, or other things (s25 GIIC)</p> <p>Entry powers (s26 GIIC)</p> <p>Prevent contravention -</p>	<p>Commissioner is entitled to full and free access at all reasonable times to the records or other things of a PSO (s87(d))</p> <p>Staff must assist public to exercise their rights under the Act but must not give legal advice (s88)</p> <p>Commissioner may delegate any powers or functions but not without the approval of the Minister (s89)</p> <p>Commissioner has the power to compel evidence (s110A)</p> <p>Commissioner must not disclose</p>	<p>Early resolution (s90)</p> <p>Procedures within discretion of the IC, little formality and technicality, not bound by the rules of evidence(s95)</p> <p>Give directions (s95(2))</p> <p>adopt procedures that are fair; ensure opportunity for participant to present views (s97(2)(a) and (b))</p> <p>Preliminary enquiries (s98)</p> <p>Require better reasons (s99)</p> <p>Access to documents (s100)</p>	<p>In conducting a review, the Ombudsman may carry out an investigation into the subject matter of the application (and may exercise the investigative powers conferred on the Ombudsman by the <i>Ombudsman Act 1972</i>, including powers of a Commission as defined in the <i>Royal Commissions Act 1972</i>) (s38(5)(a))</p> <p>In any proceedings concerning a determination made by the agency under the Act, the burden of establishing that the determination</p>		<p>General procedure reviews and complaints to be conducted with as little formality and technicality as possible (s49H & s61G)</p> <p>FOIC reviews bound by rules of natural justice (s49H)</p> <p>FOIC power to compel agency to produce documents (issue production notice) limited to investigation of complaints (s61J)</p> <p>FOIC or agency may apply to Supreme Court to determine question of FOIC's jurisdiction to issue production</p>	<p>Power to do all things that are necessary or convenient; to be done for or in connection with the performance of the Commissioner's functions (s64)</p> <p>Obtain information and make inquiries (s70(1))</p> <p>Require the production of information or documents to the Commissioner (s 72(1))</p> <p>Require a person to attend before the Commissioner to answer questions</p>

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	<p>Minister to produce a document they claim is exempt under the national security exemption (s 33), Cabinet documents exemption (s 34) or Parliamentary Budget Office documents exemption (s 45A) if the Commissioner is not satisfied by affidavit or other evidence that the document is exempt (s 55U FOI Act)</p> <p>May order an agency or minister to undertake further searches for documents (s 55V FOI Act)</p> <p>Compel a person to appear before him or her (s 55W FOI Act)</p> <p>Require evidence be given on an oath or affirmation (s 55X FOI Act)</p>	<p>standing to apply for an injunction and judicial review (s28 GIIC)</p> <p>Formal enquiries - powers conferred on a Royal Commission for IC and witnesses</p> <p>Furnish info to IC IC may furnish information to Ombudsman; ICAC; DPP; PIC; and agencies (ss 31-33 GIIC)</p>	<p>exempt information in reports, decisions or any other form (s102)</p> <p>Commissioner can refer application back to PSO and require a further review of its internal review decision (s103(2))</p> <p>CEOs have a duty to ensure their organisation complies with the standards of records (and archives) management which must be prepared and reviewed in consultation with or with the input from the Commissioner (ss137, 138 and 139)</p>	<p>Require access in a particular form (s101),</p> <p>Require search (s102)</p> <p>Require information, documents and attendance (s103)</p> <p>Examining witnesses (s104)</p> <p>Additional power to review any decision made by agency or Minister regarding the access application (s105)</p> <p>IC to ensure nondisclosure of particular information (s108)</p> <p>Requirement to assist during review (s96)</p> <p>IC must include reasons for decision (s110)</p>	<p>is justified lies on the agency (s48)</p> <p>In conducting a review, the Ombudsman may require agency to sort or compile documents (if agency has failed to do so) or undertake consultations relevant to the review that should have been undertaken (s38(5)((b))</p> <p>Ombudsman must notify applicant, agency and interested persons of determination and reasons for decision (s38(13))</p>		<p>notice (s61K)</p> <p>In matters before VCAT the agency has the onus to establish any exemption was justified (s55)</p>	<p>(s72(3))</p> <p>Examine a person under oath or affirmation (s73)</p> <p>Require the production of the disputed documents to the Commissioner for inspection (s75(1))</p>
REVIEW POWERS Specific review powers	IC reviewable decision – access refusal decisions (s 54L FOI Act and access grant	Reviewable decision (s80)	90 days for applicants to complain to OIC	Reviewable decision (defined	Review determination of agency to refuse	External review of agency decision on	Reviewable decision of agency	Commissioner's decisions are

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by Information Commissioner	<p>decisions (s 54M FOI Act)</p> <p>An agency or Minister must comply with an IC review decision (s 55N FOI Act)</p> <p>On receiving an FOI request, the agency or Minister must no later than 14 days after the day the request is received, take all reasonable steps to notify the applicant that the application has been received (s 15(5)(a) FOI Act)</p> <p>The Commissioner has IC review functions (Part 7 FOI Act).</p> <p>The Commissioner can make a decision to affirm, vary, or set aside and substitute an access refusal or access grant decision of an agency or Minister (s 55K FOI Act).</p> <p>The Commissioner may make preliminary inquiries (s 54V FOI Act).</p> <p>The Commissioner may decide not to undertake or continue a IC review if the IC review applicant is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (s 54W(a)(i))</p>	<p>IC power of recommendation in relation to reviews (ss92, 93, 94) and general procedure (s95)</p> <p>Making of a review application s89 (GIPA)</p> <p>Onus on agency to justify (s97(1))</p> <p>Onus on applicant to establish entitlement to reduction in processing charge (97(3))</p> <p>Onus on 3rd party applicant to justify non release (s97(2))</p> <p>IC refusal to entertain frivolous, vexatious, misconceived, lacking in substance; or review would require unreasonable and substantial diversion of</p>	<p>from the date of PSO's internal review notification;</p> <p>60 days to appeal to the Supreme Court on a matter of law only</p> <p>28 days for referral to NTCAT for hearing on application by the Respondent, when complaint is substantiated but not resolved by mediation (s112A(2)) or on application from the Complainant when the matter is dismissed (s112A(1)(b))</p>	<p>in Schedule 6)</p> <p>Must be made within 20 business days from the date of the written notice of the decision (or within the longer period the IC allows) (s88)</p> <p>Affirm, vary or set aside and substitute decision (s110)</p> <p>Decide not to review or further deal with all or part of external review application (s94)</p> <p>Declare vexatious applicants (s114)</p> <p>Vary or revoke vexatious declaration (s115)</p>	<p>to deal with an application (s18).</p> <p>Review of determination of agency to refuse access (s20).</p> <p>Review of agency's determination to refuse to amend records (s35).</p> <p>Review of agency's determination to refuse to add notation to records (s37).</p> <p>On application for external review the Ombudsman may confirm, vary or reverse the determination the subject of the review (s38(11)).</p> <p>Ombudsman cannot make a determination that access is to be given to an exempt document but may offer</p>	<p>internal review (s 44).</p> <p>External review where: initial decision made by Principal Officer of Minister and therefore internal review not available; the agency or Minister has made a decision that the requested information does not exist or is not in possession, where insufficiency of search; and where no decision has been made within the stipulated time (s45(1)).</p> <p>Review of delayed decision as a deemed</p>	<p>(s49A)</p> <p>FOIC may choose not to accept or may dismiss review at any stage if – frivolous, vexatious, etc., failure to cooperate, more appropriate to go to Tribunal, review not appropriate in circs, or unable to contact applicant (s49G)</p> <p>Agencies must assist FOIC (s49I)</p> <p>Must give parties opportunity to make written submissions (s49H)</p> <p>FOIC may resolve by agreement (s49K)</p> <p>FOIC may refer back to Agency for fresh decision (s49L)</p> <p>FOIC may facilitate</p>	<p>legally binding.</p> <p>Power to review any decision made the agency and decide any matter that could, under the Act, have been decided by the agency (s76(1))</p> <p>Commissioner's decision must be in writing either confirming, varying or setting aside the agency's decision (s76(2))</p>

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	<p>FOI Act); applicant's failure to cooperate in progressing application or without reasonable excuse (s 54W(a)(ii) FOI Act); applicant un-contactable after making all reasonable attempts (s 54W(a)(iii) FOI Act); failure to comply with a direction of the Information Commissioner (s 54W(c) FOI Act)</p> <p>Decide not to undertake or continue an IC review if the Information Commission is satisfied that the interests of the administration of the FOI Act make it desirable that the IC reviewable decision be considered by the AAT (s 54W(b) of the FOI Act).</p> <p>Decide not to investigate a complaint made under s 70 (s 73 FOI Act)</p> <p>May by written instrument declare a person a vexatious applicant (s 89K FOI Act)</p>	<p>resources; failure without reasonable excuse of co-operate with IC; inability to contact application (s96)</p>			<p>reasons as to why an agency might give access to the document despite its exempt status (s38(12)).</p> <p>Ombudsman may publish reasons for a determination, if Ombudsman consider it is in the public interest or the interests of the agency to do so (s38(14)).</p> <p>Ombudsman may comment on any unreasonable, frivolous or vexatious conduct on the part of applicant or agency (s38(16)).</p> <p>Ombudsman has power to review a fee or charge imposed by an agency under s 53 FOI Act (and in accordance with the Freedom of Information (Fees and Charges)</p>	<p>refusal (s46)).</p> <p>Ombudsman may refer application back to agency for decision; promote settlement of an application, decline to continue where the applicant fails to comply with a direction; require that further or better reasons for decision be given; and decline a review on the grounds that it is vexatious or lacking in substance (s47(1)).</p>	<p>negotiated agreement (s49N)</p> <p>FOIC may ask agency for explanation re exemption/s and, if not satisfied, may ask to inspect and make copies of review documents (s63C)</p> <p>FOIC notice of decision must set out reasons (s49P)</p> <p>Decision of FOIC has same effect as decision of agency (s49P)</p> <p>FOIC cannot be a party to a review by the Tribunal but may be called on to assist Tribunal in a review (s51)</p> <p>Power to make recommendation on matter arising in review to a 'relevant authority' (s49O)</p>	

	Commonwealth	NSW	NT	QLD	SA	TAS	VIC	WA
					<p>Regulations 2003.). A person can seek a review of an agency's determination of a fee or charge.</p> <p>A person dissatisfied with the agency's review may seek a further review from the Ombudsman.</p> <p>The Ombudsman may waive, vary, confirm or vary the fee or charge and/or give directions as to the payment for a fee or charge (s53(4).</p>			
<p>TIME FRAMES</p> <p>Review by the Information Commissioner i.e. maximum days to escalate matter (external review)</p>	<p>An application for IC review of an 'access refusal' decision (s 54L) must be made within 60 days after the notice of the IC reviewable decision was given (s 54S(1) FOI Act)</p> <p>An application for IC review on an 'access grant' decision (s 54M) must be made within 30 days after the notice of the IC reviewable decision was given (s 54S(2) FOI Act)</p>	<p>Review by Information Commissioner – made within 40 working days after notice of the decision</p> <p>An agency's decision as to the validity of an application must be made and notified to the</p>	<p>Applicant has 90 days after reviewing the notice to make a complaint to Information commissioner (s41(b))</p>	<p>Application for external review must be made within 20 business days from the date of the written notice of the decision (or within the longer period the IC allows) (s88(1)(d))</p> <p>Within 10 business days after the purported</p>	<p>Person aggrieved by a determination of an agency following an internal review may apply to the Ombudsman for a review of the determination (s38)</p> <p>Application must be made within 30 days after the</p>	<p>Application must be made within 20 working days from the date the decision is received, or if no decision is received, 20 working days from the 15 working days from the date the application for disclosure</p>	<p>Application for review of decision must be received within 28 days after the day on which written notice in writing is given (s49B)</p> <p>Required period for FOIC to complete review is</p>	<p>Applicant may lodge an external review application within 60 days after being given written notice of the decision (s66(2))</p> <p>3rd party may lodge an external review</p>

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	An FOI applicant or an affected third party may ask the Information Commissioner for an extension of time to apply for IC review (s 54T FOI Act)	applicant as soon as practicable after the agency receives the application and in any event within 5 working days after the application is received. (s51(2))		application is received, the entity must give prescribed written notice to the applicant of the decision. (s32(2))	person received notification of the determination (s38(3)). Ombudsman has a discretion to extend time (s38(4)). Application to review an agency's determination must be made within 30 days after notice of the decision (s39(3))	was lodged S44(1). There is no power to extend time.	30 days or longer period agreed in writing by Applicant (s49J) Complaint must be made within 60 days after the action or conduct complained of occurred (s61A(4))	application within 30 days after being given written notice of the decision (s66(3))
COMPLAINTS MANAGEMENT AND DISPUTE RESOLUTION POWERS/FUNCTIONS	Investigate complaints against agencies in the performance of their functions under the FOI Act. Initiate own motion investigations (s 69 FOI Act)	Making of a complaint s17 (GIIC) Assist resolution, investigate, refer. Dealing with a complaint: information; discussions; facilitate direct resolution; investigation (s19 GIIC) Require an agency to produce information,	Complaints may be dealt with jointly (s104A) Accept, reject or refer a complaint back to the PSO within 90 days (s106) Refer a complaint to Ombudsman, Health Complaints Commission or interstate Privacy Commissioner (s108)	Onus on agency to justify (s87(1)) Onus on participant objecting if disclosure decision (s87(2)) IC refusal to deal with all or part of external review application if frivolous, vexatious, misconceived, lacking in substance; failure	Ombudsman may try to effect a settlement between participants to the review (s38(5)(c)(i)) At request of agency, may suspend review to allow an opportunity for a settlement to be negotiated (s38(5)(c)(ii)) Agency and	No complaints function under the Act, but complaint can be made under the <i>Ombudsman Act 1978</i> . The Ombudsman does not have power, however, to investigate a matter under the Ombudsman Act if it could be the subject of review under the RTI Act ((s47(3)).	Handle complaints (s61A) FOIC may refer complaint to another body if more appropriate to deal with (s61C) FOIC may not accept or may dismiss complaint at any stage if – frivolous, vexatious, etc., failure to cooperate, review not appropriate in	Commissioner: may determine the procedure for investigating and dealing with complainants (s70(4)) may direct that all submissions are to be in writing (s70(5)(b)) may require parties to attend compulsory

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		<p>records, or other things (s25 GIIC)</p> <p>Entry powers (s26 GIIC)</p> <p>Prevent contravention - standing to apply for an injunction and judicial review (s28 GIIC)</p> <p>Formal enquiries - powers conferred on a Royal Commission for IC and witnesses</p> <p>Furnish info to IC. IC may furnish information to Ombudsman; ICAC; DPP; PIC; and agencies (ss 31-33 GIIC)</p>	<p>Investigate an accepted complaint (s110)</p> <p>Decide on the release of 3rd party information</p> <p>Decide whether there is sufficient prima facie evidence of the matter complained of</p> <p>Notify parties with a written prima facie decision</p> <p>Refer matter to mediation as a precondition to a Tribunal proceeding if not already referred to mediation during process of investigation</p> <p>Conduct the mediation and provide mediation certificate (s111)</p> <p>Refer a complaint to the Tribunal after receiving an</p>	<p>to comply with direction by IC; failure to cooperate in progressing the external review application without reasonable excuse; inability to contact applicant (s94); substantial and unreasonable diversion of resources (s41); previous application for same documents (s43)</p>	<p>applicant must cooperate in the process (including attempts of Ombudsman to effect a settlement) (s38(7))</p> <p>Ombudsman may dismiss an application if applicant has failed to comply with s38(7) (s38(8)).</p> <p>Ombudsman might conciliate a complaint or investigate an administrative error on the part of an agency administering the FOI Act under provisions of the <i>Ombudsman Act 1972</i>.</p>	<p>Ombudsman can promote settlement of an application for review and give directions in this regard ((s47)).</p>	<p>circs, or unable to contact applicant (s61B)</p> <p>Must dismiss complaint if subject matter has been or can be dealt with as a review by FOIC or the Tribunal (s61B)</p> <p>FOIC must give written reasons if complaint dismissed (s61B)</p> <p>Complaints investigation, agencies must cooperate with FOIC, must be dealt with in private (s61D-F)</p> <p>FOIC to conduct preliminary enquiries and consult with parties (s61G)</p> <p>FOIC must take reasonable steps to resolve</p>	<p>conciliation conferences (s70(5)(c))</p>

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			<p>application from the Complainant (s112A(1)) or application from the Respondent (s112A(2)), both of which must be made within 28 days of receiving the decision to dismiss or if not resolved by mediation or other agreement respectively</p> <p>Commissioner must refer the complaint to the Tribunal (s112A(5)) and prepare a written report within 60 days of the referral (s112B)</p>				<p>informally (s61G)</p> <p>Complaint to be conciliated if cannot be resolved (s61H)</p> <p>Procedures if conciliation unsuccessful (s61I)</p> <p>FOIC may ask agency or Minister to produce documents (s61I)</p> <p>FOIC power to compel production of documents requested under s61I (s61J)</p> <p>FOIC may make recommendations to agency or Minister re complaint, if appropriate (s61L)</p>	

REGULATORY POWERS AND	IC may delegate, in writing, all or any of his or her functions or	IC may delegate any function to	Commissioner may delegate	IC may delegate to a member of staff	Ombudsman may delegate powers	Ombudsman may delegate	FOIC may delegate to staff or	The Governor may appoint an
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<p>DELEGATION</p>	<p>powers to a member of staff of the Office of the Australian Information Commissioner other than:</p> <ul style="list-style-type: none"> • preparing the Annual Report; • issuing Guidelines; • referring a question of law to the Federal Court under s 55H of the FOI Act; • making an IC review decision under s 55K of the FOI Act or correcting errors in an IC review decision under s 55Q; • exercising the discretion not to investigate a complaint under s 73 of the FOI Act and notifying on completion of an investigation s 86 FOI Act; • implementing notices and reports ss 89 and 89A of the FOI Act; and • making a vexatious applicant declaration under s 89K of the FOI Act. 	<p>staff or persons authorised through regs (s13 GIIC)</p> <p>Monitor, audit, report (s17)</p> <p>Education & advice (s17)</p> <p>Issue statutory guidelines and other publications (ss17, 22)</p> <p>Review agency decisions (s17)</p> <p>Report and recommend to Minister proposals for legislative and administrative changes (s17)</p>	<p>powers and functions under the Act but must not do so without the approval of the Minister (s89)</p> <p>May require a PSO to answer a question, produce a record, or other thing (s87(e)).</p> <p>Commissioner has the power to compel evidence (s110A)</p> <p>Commissioner can refer application back to PSO and require a further review of its internal review decision (s103(2))</p>	<p>of OIC all or any of the commissioner's powers (s145)</p> <p>Monitor, audit and report (s131)</p> <p>General Power to do all things necessary in connection with functions under an Act (s125)</p> <p>Training, information, assistance and guidance (s128)</p> <p>Comment on legislative and administrative changes (s128)</p> <p>Review decisions of agencies and Ministers (s130)</p>	<p>under section 9 of the <i>Ombudsman Act 1972</i>.</p>	<p>powers pursuant to s10 of the Ombudsman Act.</p>	<p>persons engaged under s6J of FOIA, any functions and powers, except - power to make decision on review; power to make recommendation re complaint; power to prepare reports required under Pt VII of FOIA</p>	<p>Acting Information Commissioner, where the Commissioner is on leave or unable to perform the functions of the office (s59)</p> <p>Commissioner may, in writing, delegate to a member of staff the performance of the Commissioner's functions, excluding the power to require the production of disputed documents, make a decision, or review exemption certificates (s79)</p> <p>Commissioner may nominate a person to act as conciliator in relation to a complaint, who can require parties to attend compulsory conferences</p>
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								(ss71(3)&(4))
OFFENCE PROVISIONS AND PROTECTIONS	<p><u>Offences:</u></p> <p>Contravention of s 55R obligation to produce information and documents. 6 months imprisonment (s 55R(5) FOI Act)</p> <p>Contravention of s 55W obligation to appear before the Information Commissioner, 6 months' imprisonment (s 55W(3) FOI Act)</p> <p>Contravention of s 55X answering truthfully under oath or affirmation. 6 months imprisonment (s 55X(3) FOI Act)</p> <p>Failure to comply with a notice issued under s 79 by the Information Commissioner. 6 months imprisonment (s 79(5) FOI Act)</p> <p>Failure to comply with a notice issued under s 82 by the Information Commissioner, 6 months' imprisonment (s 82(3) FOI Act)</p> <p>Contravention of s 83 answering truthfully under oath or affirmation (s 83(3) FOI Act)</p>	<p>Unlawful access (s119)</p> <p>Concealing or destroying (s120)</p> <p>Protection breach of confidence, defamation (s113) criminal action (s114), personal liability (s115)</p> <p>Obstruct; hinder; resist; make false statements; mislead (s43(2) GIIC)</p> <p>Immunity of IC and others (s42:45 GIIC)</p> <p>No powers to bring offence proceedings (s28(6) GIIC)</p> <p>Acting unlawfully (s116)</p> <p>Directing unlawful action (s117)</p> <p>Improperly influencing (s118)</p>	<p>A person must not conceal or dispose of govt info to prevent access or correction</p> <p>Person must:</p> <ul style="list-style-type: none"> not breach confidentiality provisions of s148; not knowingly provide false or misleading info; not without reasonable excuse obstruct, hinder or fail to comply with Commissioner. 	<p>Unlawful access to document (s176)</p> <p>Disclosure or taking advantage of information (s179)</p> <p>Protection defamation or breach of confidence (access s170 and publication s171 RTI Act); (s171); criminal (access to document s172 and publication s173); personal liability (s174)</p> <p>False or misleading information (s177)</p> <p>Direction to employee to act in particular way (s175)</p> <p>Failure to produce documents or attend proceedings (s178)</p>	<p>Protection against criminal actions with respect to giving access to a document (if person by whom determination is made honestly believes that the Act permits or requires the determination to be made) (s51)</p> <p>Protection in respect of actions for defamation or breach of confidence in certain cases (s50).</p> <p>Immunity from liability for Ombudsman or staff for any act or omission in good faith (s30(1) <i>Ombudsman Act 1972</i>).</p> <p>It is an offence to obstruct the Ombudsman in the performance of investigative powers under the</p>	<p>A person must not deliberately obstruct or unduly influence a principal officer, a Minister, a delegated officer or the Ombudsman in the exercise of the power to make decisions (s50(1)).</p> <p>A person must not deliberately fail to disclose the subject of an application where that person knows the information exists (s50(2)).</p> <p>Principal Officers, Ministers and the Crown are protected against actions for defamation or breach of confidence where information has been provided</p>	<p>FOIC must ensure only specified person has access to docs produced in review or complaint. Criminal offence to intentionally or recklessly disclose to non-specified person other than Agency who produced the docs.</p> <p>Penalty: 240 penalty units or 2 years prison or both.</p> <p>No defamation or breach of confidence for giving access to document (s62)</p> <p>No personal liability for making complaint (s63B)</p> <p>No criminal offence - giving or authorizing access (s63)</p> <p>FOIC and others not compellable to</p>	<p>It is an offence for a person to gain access to a document containing personal or business information about another person by deceit (s109)</p> <p>It is an offence for a person to destroy a document to prevent access to it (s110)</p> <p>Officers of an agency are protected from defamation, criminal liability and personal liability if they act in good faith (ss104-107)</p> <p>Commissioner and his or her staff are protected from personal liability for an act done or omitted to be done in good</p>

	<p><u>Protections:</u></p> <p>Claim of legal professional privilege to documents or information produced for the purpose of an IC review (s 55Y FOI Act)</p> <p>Protection for persons from liability in the IC review process (s 55Z FOI Act)</p> <p>Protection from liability relating to documents produced for an investigation (s 85 FOI Act)</p> <p>Protection from civil action in investigations under s 70 (s 89E FOI Act)</p> <p>General protection against civil liability (s 90 FOI Act)</p> <p>Protection against civil liability in particular situations (s 91 FOI Act)</p> <p>Protection against criminal liability (s 92 FOI Act)</p>	<p>Falsely represent IC or staff; cause inflict or procure violence, punishment, damage, disadvantage; dismiss any employee, prejudice any employees employment (s43 GIIC)</p>			<p>Ombudsman Act (s 24 <i>Ombudsman Act 1972</i>).</p> <p>If Ombudsman or SACAT forms opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in administration of the act, may bring evidence to the notice of appropriate person with a view to disciplinary action being taken (s39(17), s42).</p> <p>A person acting honestly and in the exercise or purported exercise of functions under the Act incurs no civil or criminal liability in consequence of doing so (s52)</p>	<p>as required or permitted by the Act or where the officer or Minister authorised its release in the belief that it was required to be provided (s51).</p> <p>Where information has been provided in the circumstances referred to above, no person concerned in providing the information, is guilty of a criminal offence by reason only of the provision of the information or authorising that provision (s52).</p>	<p>produce documents (s63A)</p> <p>No penalty or offence provisions for agencies.</p>	<p>faith (s80)</p> <p>It is an offence for the Commissioner or his or her staff to disclose confidential information or take advantage of it for their own benefit (s82(2))</p> <p>It is an offence for an agency to fail to produce information or documents, attend before the Commissioner or attend conciliation (s83)</p>
REVIEW/APPEAL	Application for Information	GIPA formal	FOI application to	Application	FOI request	Fee on	FOI request	FOI application

<p>AVENUE INCLUDING FEES AND CHARGES</p>	<p>Commissioner review or complaints: free</p> <p>EXTERNAL REVIEW:</p> <p>Discretion to not undertake a review or not to continue a review if satisfied the decision should be considered by the AAT (s 54W(b) FOI Act)</p> <p>Commissioner can refer questions of law to → Federal Court of Australia (s 55H FOI Act)</p> <p>Apply to Federal Court for order directing agency or Minister compliance with IC review decision – application made by review applicant or Commissioner (s 55P FOI Act)</p> <p>Appeal questions of law to Federal Court by review party from a decision of the Information Commissioner on an IC review (s 56 FOI Act)</p> <p>Application to the AAT – review of an Information Commissioner’s vexatious applicant declaration under s 89K (s 89N FOI Act)</p>	<p>access application (\$30) (s41) with provision for waiver (s127)</p> <p>Internal (agency) review (\$40) – no processing charges (s87)</p> <p>External review by IC: free</p> <p>External review by NCAT: fee prescribed under the <i>Civil and Administrative Tribunal Regulation 2013</i>.</p> <p>No review by IC if decision is or has been the subject of NCAT review (s98)</p> <p>Referral of systemic issues to IC from NCAT (s111)</p>	<p>agency-\$30</p> <p>EXTERNAL REVIEW:</p> <p>IC: free</p> <p>NTCAT: fee</p> <p>APPEAL:</p> <p>Appeal to Supreme Court on Commissioner or NTCAT decisions by a person aggrieved on <i>questions of law</i> only (s129)</p>	<p>(\$46.40);</p> <p>Internal agency review (no fee)</p> <p>EXTERNAL REVIEW:</p> <p>IC: free</p> <p>QCAT – applicant appeal question of law (no fee) (s119)</p> <p><i>RTI Act</i> Processing charge (more than 5 hours - \$7.20 for each 15 minutes; no processing charge under RTI Act if document contains personal information)</p> <p>Access charges may apply under RTI Act</p> <p>IC referral question of law QCAT (no fee) (s118)</p> <p>Application to QCAT – review of decision about financial hardship (no fee) (s120)</p>	<p>application fee currently \$34.25</p> <p>Processing charges may also be imposed by agency</p> <p>EXTERNAL REVIEW (no fee).</p> <p>Prescribed fees and charges (s53(1))</p> <p>Waiver of fees (s53(2)(a))</p> <p>Member of Parliament entitlements- access without charge unless work generated by application more than \$1000 (s53(2)(b)).</p> <p>APPEAL:</p> <p>Agency → SACAT on a question of law (s40(1)).</p> <p>Person → SACAT (s40(2)).</p> <p>A person who is aggrieved by a determination of</p>	<p>application for assessed disclosure of information - \$38.25. There is provision for waiver in certain circumstances.</p> <p>No fee on applications for external review.</p> <p>There is no right of appeal under the Act, only a right to appeal to the Supreme Court on a question of law.</p>	<p>application fee as at 1/7/15 \$27.90 (s17)</p> <p>EXTERNAL REVIEW:</p> <p>FOIC: free</p> <p>TRIBUNAL (VCAT): FEE except if an application from ‘deemed refusal’ by Commissioner (s49J(2)) or applicant seeking own documents. From 1/7/2016 no fee</p> <p>FOIC dismisses review as more appropriate by Tribunal</p> <p>Application to Supreme Court on question of FOIC’s jurisdiction to issue production notice (s61K)</p> <p>Application fee can be waived or reduced if it would cause hardship.</p> <p>Access charges can be charged for</p>	<p>to agency: \$30 (no fee if only seeking personal information about self)</p> <p>Agencies can impose charges for dealing with an access applicant (no charges if only seeking personal information about self).</p> <p>Charge for access <i>must be calculated by an agency in accordance with principles per s16</i></p> <p>Information Commissioner can make a costs order on external review in exceptional cases (s84). Parties can appeal to the Supreme Court of WA on any question of law arising out of the</p>
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				<p>Application to QCAT – review of vexatious applicant declaration (no fee) (s121)</p> <p>Appeal by applicant of QCAT decision (\$315.70, s119)</p>	<p>an agency following internal review (or where decision not eligible for internal review) may appeal directly to District Court (s40(2)).</p> <p>Ombudsman cannot be a party to appeal proceedings (s40(6)).</p> <p>SACAT must order agency pays other party's reasonable costs (s40(8)(a)).</p> <p>SACAT may order that a party pay costs of agency, only if satisfied that the party acted unreasonably, frivolously or vexatiously (s40(8)(b)).</p> <p>Proceedings in SACAT are to be commenced within 30 days after notice of the</p>		<p>searching for and providing access to documents as per FOI (Access Charges) Regns.</p> <p>Access charges can be waived or reduced.</p> <p>No charge for person who is impecunious seeking own personal info.</p> <p>No charge for searching for MP's.</p> <p>Agency must seek a deposit if charges are more than \$50. Up to \$100 deposit is \$25. Over \$100 deposit is 50% of the charge.</p> <p>The 45 days for processing the request starts when the deposit is paid.</p> <p>Documents do not have to be</p>	<p>Commissioner's decision (s85)</p> <p>Subject to ss 89(2) & (3), the Supreme Court may make an order or decision relating to costs as it thinks fit (s89(1))</p> <p>If an agency appeals a decision, it bears its own costs (89(2))</p> <p>Commissioner is not liable for any costs in respect of his or her decisions or review proceedings, except where the Commissioner has referred a question of law to the Supreme Court (s89(3))</p> <p>No other review of a decision of the agency, the Premier or the Commissioner, otherwise than</p>
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					<p>determination to which the proceedings relate (s40(3)).</p> <p>External review and SACAT proceedings are not available to an agency or person simultaneously (s40(3)).</p> <p>SACAT application fee as at 1 July 2016 \$71.60.</p>		<p>provided until access charges are paid.</p> <p>Applicant can appeal a charge to VCAT but FOIC has to first certify that the matter is sufficiently important for VCAT to consider per s.50(1)(g).</p>	<p>under the Act (s103)</p>
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Other notes:

- In all jurisdictions apart from Victoria, the FOI Acts provide for decisions for which internal review may be sought:
 - Commonwealth – Part IV
 - NT – s 38
 - NSW – s 82
 - QLD – s 80
 - SA – s 38
 - TAS – s 43
 - WA – s 39
 - Victoria – the review powers of the FOI Commissioner replace the internal review process