

Schedule 1—Exempt documents

Part 1—Restricted documents

1—Cabinet documents

- (1) A document is an exempt document—
 - (a) if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or
 - (b) if it is a preliminary draft of a document referred to in paragraph (a); or
 - (c) if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
 - (e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or
 - (f) if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.

- (2) A document is not an exempt document by virtue of this clause—
- (a) if it merely consists of factual or statistical material (including public opinion polling) that does not—
 - (i) disclose information concerning any deliberation or decision of Cabinet; or
 - (ii) relate directly to a contract or other commercial transaction that is still being negotiated; or
 - (ab) merely because it was attached to a document described in subclause (1); or
 - (b) if 20 years have passed since the end of the calendar year in which the document came into existence.
- (2a) A document is not an exempt document by virtue of this clause if—
- (a) the document has been submitted to Cabinet by a Minister; and
 - (b) a Minister has certified that Cabinet have approved the document as a document to which access may be given under this Act.
- (3) In this clause, a reference to Cabinet includes a reference to a committee of Cabinet and to a subcommittee of a committee of Cabinet.

2—Executive Council documents

- (1) A document is an exempt document—
- (a) if it is a document that has been specifically prepared for submission to the Executive Council (whether or not it has been so submitted); or
 - (b) if it is a preliminary draft of a document referred to in paragraph (a); or
 - (c) if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
 - (e) if it contains matter concerning any deliberation or advice of the Executive Council.
- (2) A document is not an exempt document by virtue of this clause—
- (a) if it merely consists of—
 - (i) matter that appears in an instrument that has been made or approved by the Governor and that has been officially published (either in the Gazette or elsewhere); or
 - (ii) factual or statistical material that does not disclose information concerning any deliberation or advice of the Executive Council; or
 - (ab) merely because it was attached to a document described in subclause (1); or
 - (b) if 20 years have passed since the end of the calendar year in which the document came into existence.
- (3) A document is not an exempt document by virtue of this clause if—
- (a) the document has been submitted to Executive Council by a Minister; and
 - (b) a Minister has certified that Executive Council have approved the document as a document to which access may be given under this Act.

3—Exempt documents communicated by another government

A document is an exempt document if—

- (a) it contains information from an intergovernmental communication to the Government of South Australia or a council; and
- (b) notice has been received from the relevant Government or council that the information would be protected from disclosure under a corresponding law of the Commonwealth or another State.

4—Documents affecting law enforcement and public safety

- (1) A document is an exempt document if it contains matter the disclosure of which could reasonably be expected—
 - (a) to endanger the life or physical safety of any person; or
 - (b) to prejudice the fair trial of any person or the impartial adjudication of any case; or
 - (c) to facilitate the escape from lawful custody of any person.
- (2) A document is an exempt document if it contains matter the disclosure of which—
 - (a) could reasonably be expected—
 - (i) to prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case; or
 - (ii) to enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (iii) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); or
 - (iv) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or
 - (v) to endanger the security of any building, structure or vehicle; or
 - (vi) to prejudice any system or procedure for the protection of persons or property; and
 - (b) would, on balance, be contrary to the public interest.
- (3) A document is an exempt document if it is a document that was created by the former Bureau of Criminal Intelligence or has been created or is held by the State Intelligence Section of South Australia Police or any authority substituted for that body.
- (3a) A document is an exempt document if it has been created by South Australia Police and contains information classified by the Commissioner of Police, in accordance with the provisions of any other Act, as criminal intelligence.
- (4) In this clause, a reference to the law includes a reference to the law of the Commonwealth, the law of another State and the law of another country.

Part 2—Documents requiring consultation

5—Documents affecting inter-governmental or local governmental relations

- (1) A document is an exempt document if it contains matter—
 - (a) the disclosure of which—
 - (i) could reasonably be expected to cause damage to intergovernmental relations; or
 - (ii) would divulge information from a confidential intergovernmental communication; and
 - (b) the disclosure of which would, on balance, be contrary to the public interest.

6—Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
- (2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.
- (3) A document is not an exempt document by virtue of subclause (1) or (2) merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.
- (3a) A document is an exempt document if it contains matter—
 - (a) consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and
 - (b) the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.

6A—Exempt electoral records

A document is an exempt document if it is a record of information about an elector obtained in the course of the administration of the *Electoral Act 1985* or the *Local Government (Elections) Act 1999*; but not recorded on an electoral roll (as defined in that Act).

7—Documents affecting business affairs

- (1) A document is an exempt document—
 - (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or
 - (b) if it contains matter—
 - (i) consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and

- (ii) the disclosure of which—
 - (A) could reasonably be expected to destroy or diminish the commercial value of the information; and
 - (B) would, on balance, be contrary to the public interest; or
- (c) if it contains matter—
 - (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
 - (ii) the disclosure of which—
 - (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
 - (B) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is made.
- (3) A document is not an exempt document by virtue of this clause if it is a contract entered into by the Crown or an agency after the commencement of this subclause.

8—Documents affecting the conduct of research

- (1) A document is an exempt document if it contains matter—
 - (a) that relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated), including research that is yet to be commenced or yet to be completed; and
 - (b) the disclosure of which—
 - (i) could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out; and
 - (ii) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning research that is being, or is intended to be, carried out by the agency or other person by or on whose behalf an application for access to the document is made.

Part 3—Other documents

9—Internal working documents

- (1) A document is an exempt document if it contains matter—
 - (a) that relates to—

- (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and
 - (b) the disclosure of which would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause if it merely consists of—
- (a) matter that appears in an agency's policy document; or
 - (b) factual or statistical material.

10—Documents subject to legal professional privilege

- (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document by virtue of this clause merely because it contains matter that appears in an agency's policy document.

11—Documents relating to judicial functions etc

A document is an exempt document if it contains matter—

- (a) relating to the judicial functions of a court or tribunal; or
- (b) prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard before a court or tribunal; or
- (c) prepared by or on behalf of a court or tribunal (including any order or judgment made or given by the court or tribunal) in relation to proceedings that are being heard or have been heard before the court or tribunal.

12—Documents the subject of secrecy provisions

- (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.
- (2) A document is not an exempt document by virtue of this clause unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.

13—Documents containing confidential material

- (1) A document is an exempt document—
 - (a) if it contains matter the disclosure of which would found an action for breach of confidence; or
 - (b) if it contains matter obtained in confidence the disclosure of which—
 - (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
 - (ii) would, on balance, be contrary to the public interest.

- (2) A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause (1) unless—
- (a) it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and
 - (b) that term of the contract has been approved by—
 - (i) in the case of a contract entered into by the Crown—a Minister; or
 - (ii) in the case of a contract entered into by a State Government agency—the responsible Minister for the agency; or
 - (iii) in the case of a contract entered into by an agency that is not a State Government agency—the agency.
- (3) Subject to subclause (4), a Minister may, by instrument in writing, delegate the power to approve a term of a contract under subclause (2) to a specified person or to the holder of a specified office.
- (4) A delegation under subclause (3) may be made subject to such conditions and restrictions as the Minister thinks fit and specifies in the instrument of delegation.
- (5) A delegation by a Minister under subclause (3) is revocable at will, and does not derogate from the power of the Minister to act personally in any matter.
- (6) If a Minister or agency approves a term of a contract in accordance with subclause (2), the Minister or agency must, as soon as practicable, notify the Minister administering this Act, in writing, of that fact.
- (7) The Minister administering this Act must, in a report under section 54, state the number of contracts containing terms approved in accordance with subclause (2) during the period to which the report relates.

14—Documents affecting the economy of the State

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

- (a) could reasonably be expected—
 - (i) to have a substantial adverse effect on the ability of the Government or an agency to manage the economy, or any aspect of the economy, of the State; or
 - (ii) to expose any person or class of persons to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Parliament, the Government or an agency in the course of, or for the purpose of, managing the economy of the State; and
- (b) would, on balance, be contrary to the public interest.

15—Documents affecting financial or property interests

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

- (a) could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency; and

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

16—Documents concerning operations of agencies

- (1) A document is an exempt document if it contains matter the disclosure of which—
- (a) could reasonably be expected—
 - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or
 - (ii) to prejudice on the attainment of the objects of any test, examination or audit conducted by an agency; or
 - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
 - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
 - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
 - (b) would, on balance, be contrary to the public interest.
- (2) A document is an exempt document if—
- (a) it relates to an agency engaged in commercial activities; and
 - (b) it contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying on those commercial activities.

17—Documents subject to contempt etc

A document is an exempt document if it contains matter the public disclosure of which would, but for any immunity of the Crown—

- (a) constitute contempt of court; or
- (b) contravene any order or direction of a person or body having power to receive evidence on oath; or
- (c) infringe the privilege of Parliament.

18—Documents arising out of companies and securities legislation

A document is an exempt document if it contains matter that appears in—

- (a) a document for the purposes of the Ministerial Council for Corporations that has been prepared by, or received by an agency or Minister from, the Commonwealth or another State;
- (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Corporations, other than a document by which a decision of the Council has been officially published;
- (c) a document that has been furnished to the Australian Securities and Investments Commission by the Commonwealth, or by this or any other State, and that relates solely to the functions of the Commission in relation to the law of the Commonwealth or the law of this or any other State;

- (d) a document (other than a document referred to in paragraph (c)) that is held by the Australian Securities and Investments Commission and that relates solely to the exercise of the functions of the Commission under the law of the Commonwealth or the law of this or any other State.

19—Private documents in public library or archival collections

- (1) A document is an exempt document—
 - (a) if it has been created otherwise than by an agency; and
 - (b) if it is held in a public library or archival collection subject to a condition imposed by the person or body (not being an agency or Minister) by whom it has been placed in the possession of the library—
 - (i) prohibiting its disclosure to members of the public generally or to certain members of the public; or
 - (ii) restricting its disclosure to certain members of the public.
- (2) In this clause a reference to a public library or archival collection includes—
 - (a) State Records;
 - (b) a library that forms part of a university, college of advanced education or college of technical and further education.