



New South Wales

Government Information (Public Access) Amendment Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Government Information (Public Access) Act 2009* (the *principal Act*):
 - (i) to clarify the timing for the recording of information in the disclosure logs of agencies and what can be included in such logs and to enable affected persons who are not access applicants to object to certain information about them being included in such logs, and
 - (ii) to enable parts of agencies to be treated as separate agencies for the purposes of the principal Act, and
 - (iii) to confirm that access to open access information is to be provided in a manner that has due regard to copyright issues, and
 - (iv) to enable an agency to refuse to provide access to government information if the access applicant has already been provided with the information, and

- (v) to remove the current requirement to pay a fee for an internal review by an agency following a recommendation by the Information Commissioner, and
 - (vi) to confirm that an agency may require proof of identity from an access applicant before providing access to government information if the access application involves certain personal factors about the applicant, and
 - (vii) to provide that there is no conclusive presumption of overriding public interest against disclosure of a spent conviction to the person convicted, and
 - (viii) to clarify when an agency is required to consider whether to waive legal professional privilege in connection with an access application, and
 - (ix) to make certain other minor amendments, amendments in the nature of statute law revision and amendments that provide for savings and transitional matters,
- (b) to amend the *Criminal Records Act 1991* to provide that it is not an offence for a public authority or other government agency that has a record of a spent conviction (or its authorised officers) to make information about the conviction available to the person who was convicted,
- (c) to amend the *Privacy and Personal Information Protection Act 1998* to enable the regulations to make provision for a public sector agency to be treated as part of another public sector agency, or for a part of a public sector agency to be treated as a separate agency, for the purposes of that Act,
- (d) to make amendments in the nature of statute law revision to the *Commission for Children and Young People Act 1998* and the *Privacy Code of Practice (General) 2003*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 1 [1] confirms that the obligation imposed on agencies to provide access to their open access information does not require or permit the agencies to make such information available in a manner that would constitute an infringement of copyright.

Schedule 1 [2]–[4] rename the publication guides that agencies are required to prepare as agency information guides to better reflect the content of such guides.

Schedule 1 [5] provides for the time when an agency is required to include details in its disclosure log about an access application made to it by reference to whether an objection has been made to the inclusion of information in the log.

Schedule 1 [6] provides that an agency is not required to include information in its disclosure log about any application for certain personal information about any individual (whether or not the individual is the applicant).

Schedule 1 [7], [20], [24], [26] and [27] standardise time frames for the taking of certain action under the principal Act by reference to working days instead of days or weeks.

Schedule 1 [8] enables an access application to be made by a person even if the person does not have an Australian postal address.

Schedule 1 [10] clarifies the effect of the waiver, reduction or refund of an application fee on the making and determination of an access application. **Schedule 1 [9], [11] and [31]** make consequential amendments.

Schedule 1 [13] confirms that an agency may require an access applicant to provide proof of identity as a precondition to providing access to the government information that is being sought if the access application involves certain personal factors about the applicant.

Schedule 1 [14]–[18] enable a person whose private information might be disclosed to object to the inclusion of that information in an agency's disclosure log even if the person is not the access applicant. **Schedule 1 [12]** provides for information that must be given by an agency about such objection rights, while **Schedule 1 [21] and [36]** make consequential amendments.

Schedule 1 [19] enables an agency to refuse to provide access to government information if the access applicant has already been provided with the information under the principal Act or the former *Freedom of Information Act 1989*.

Schedule 1 [22] confirms that an internal review is not available in relation to a reviewable decision of a member of a Minister's personal staff.

Schedule 1 [23] recognises that an internal review by an agency is not required before the Information Commissioner can review a reviewable decision if an internal review by the agency is not available to the aggrieved person.

Schedule 1 [25] provides that no fee is payable for a reconsideration by an agency of a decision (including by way of internal review) pursuant to a recommendation of the Information Commissioner. Currently, a fee is payable for an internal review by an agency carried out pursuant to a recommendation of the Information Commissioner.

Schedule 1 [28] and [29] update references to reflect the fact that the principal Act is now administered by the Attorney General rather than the Premier.

Schedule 1 [30] enables notices or notifications that an agency gives under the principal Act to be given by post or such other method as may be agreed with the person concerned.

Schedule 1 [32] provides that there is no conclusive presumption of overriding public interest in relation to the disclosure of a spent conviction (within the meaning of the *Criminal Records Act 1991*) to the person who was convicted. See also the amendment made to the *Criminal Records Act 1991* by Schedule 2.2.

Schedule 1 [33] confirms that the requirement for an agency to consider whether to waive legal professional privilege in relation to government information sought under an access application is limited to situations where the application is made to the agency that has the privilege.

Schedule 1 [34] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [35] enacts certain savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [37] enables the regulations to declare that a part of an agency is for the purposes of the principal Act to be treated as a separate agency from the agency of which it forms part. **Schedule 1 [38]** makes a consequential amendment.

Schedule 2 Amendment of other legislation

2.1 Commission for Children and Young People Act 1998 No 146

Schedule 2.1 updates an outdated reference to a provision of the *Privacy and Personal Information Protection Act 1998*.

2.2 Criminal Records Act 1991 No 8

Schedule 2.2 provides that it is not an offence for a public authority or other government agency that has a record of a spent conviction (or an authorised officer of the authority or agency) to make information about the conviction available to the person who was convicted.

2.3 Privacy and Personal Information Protection Act 1998 No 133

Schedule 2.3 [2] enables the regulations under the *Privacy and Personal Information Protection Act 1998* to declare that:

- (a) a specified public sector agency is not to be regarded as a separate public sector agency and instead is to be regarded for the purposes of that Act as part of and included in another specified public sector agency, or
- (b) a specified office, branch or other part of a public sector agency is for the purposes of that Act to be regarded as being a separate public sector agency to the public sector agency of which it forms part in respect of specified functions that it exercises.

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Schedule 2.3 [1] makes a consequential amendment.

2.4 Privacy Code of Practice (General) 2003

Schedule 2.4 corrects an inconsistent use of language.

First print



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New South Wales

Government Information (Public Access) Amendment Bill 2011

No. , 2011

A Bill for

An Act to make miscellaneous amendments to the *Government Information (Public Access) Act 2009* and certain other related legislation.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Government Information (Public Access) Amendment Act 2011</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Government Information (Public Access) Act 2009 No 52	1 2
[1]	Section 6 Mandatory proactive release of certain government information	3 4
	Insert after section 6 (5):	5
	(6) Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright.	6 7 8
[2]	Sections 18 (a), 20, 21, 22 (2) and 129 (2) (c)	9
	Omit “publication guide” and “publication guides” wherever occurring.	10
	Insert instead “agency information guide” and “agency information guides”, respectively.	11 12
[3]	Part 3, Division 2, heading	13
	Omit the heading. Insert instead:	14
	Division 2 Agency information guides	15
[4]	Section 22 Role of Information Commissioner	16
	Omit “a publication guide” and “proposed publication guide” from section 22 (1).	17 18
	Insert instead “an agency information guide” and “proposed agency information guide”, respectively.	19 20
[5]	Section 26 Required information about access applications	21
	Omit section 26 (2). Insert instead:	22
	(2) No details are required to be recorded in the agency’s disclosure log:	23 24
	(a) if no objection is made under section 56 to the inclusion of information in the log before the access application is decided—until the application is decided, or	25 26 27
	(b) if an objection is made under section 56 to the inclusion of information in the log before the access application is decided—until the agency is entitled under that section to include the information in the log.	28 29 30 31
	Note. See section 56 (5) and (6) as to when an agency is entitled to include information in its disclosure log following an objection under that section.	32 33 34

[6] Section 26 (3) (a)	1
Insert “or any other individual” after “(the applicant being an individual)”.	2
[7] Sections 27 (2), 33 and 34 (2) (a)	3
Omit “60 days” and “30 days” wherever occurring.	4
Insert instead “45 working days” and “20 working days”, respectively.	5
[8] Section 41 How to make an access application	6
Omit “in Australia” from section 41 (1) (d).	7
[9] Section 41 (1), note	8
Insert at the end of the subsection:	9
Note. See section 51A concerning the effect of a waiver, reduction or refund of the fee for an access application. See also section 52 (3) concerning assistance to be afforded by an agency to an access applicant.	10 11 12 13
[10] Section 51A	14
Insert after section 51:	15
51A Effect of waiver, reduction or refund of application fee	16
(1) An agency is not to treat an application as being an invalid access application only because of the non-payment of the required application fee if:	17 18 19
(a) the payment of the fee was waived by the agency before the application was made, or	20 21
(b) the amount of the fee payable was reduced by the agency before the application was made and the reduced fee accompanied the application.	22 23 24
Note. Section 127 enables an agency to waive, reduce or refund a fee payable or paid under this Act for an application fee in any case that the agency thinks appropriate, subject to the regulations.	25 26 27
(2) If an agency waives payment of the required application fee, or reduces the amount of the fee that is payable, after the application is made (and the application would have been valid had the required application fee been paid):	28 29 30 31
(a) in the case of a waived fee—the application becomes a valid access application and is deemed to have been made when the fee was waived, or	32 33 34
(b) in the case of a reduced fee—the application becomes a valid access application when the reduced fee is paid and is deemed to have been made when the payment is made.	35 36 37

	(3) The refund of an application fee does not affect the validity of an access application that was duly made.	1 2
[11]	Section 52 Agency assistance with invalid applications	3
	Omit section 52 (4).	4
[12]	Section 54 Consultation on public interest considerations	5
	Insert after section 54 (2):	6
	(2A) If the agency considers that information about a person consulted under this section is likely to be included in the agency's disclosure log in relation to the access application, the agency must give a written notice to the person containing the following statements:	7 8 9 10 11
	(a) that information concerning the application will be included in the agency's disclosure log and that the person can object to this,	12 13 14
	(b) that there is a right of review under Part 5 of a decision by the agency to include information in its disclosure log despite the person's objection.	15 16 17
[13]	Section 55 Consideration of personal factors of application	18
	Insert "and, for that purpose, require the applicant to provide proof of his or her identity" after "disclosure of the information" in section 55 (5).	19 20
[14]	Section 56 Authorised objector can object to inclusion in disclosure log	21
	Omit section 56 (1). Insert instead:	22
	(1) Each of the following persons (an <i>authorised objector</i>) can object to the inclusion in the agency's disclosure log of all or specified information concerning an access application:	23 24 25
	(a) the access applicant,	26
	(b) any other person with whom the agency has consulted (or is required to consult) under section 54 before providing access to the information sought in the application.	27 28 29
	(1A) An objection can include reasons for the objection and, in the case of an objection by an access applicant, can be made as part of the access application or separately.	30 31 32

[15] Section 56 (2)	1
Omit “An applicant is not entitled to object to the inclusion of information on an agency’s disclosure log except on one or more of the following grounds:”	2 3
Insert instead “The grounds on which an authorised objector is entitled to object to the inclusion of information in an agency’s disclosure log are limited to any one or more of the following:”.	4 5 6
[16] Section 56 (2) (a)–(d)	7
Omit “applicant” and “applicant’s” wherever occurring.	8
Insert instead “authorised objector” and “authorised objector’s”, respectively.	9
[17] Section 56 (4A)	10
Insert after section 56 (4):	11
(4A) If a person referred to in subsection (1) (b) has objected to the inclusion of information in the agency’s disclosure log, the agency must, as soon as is reasonably practicable after the decision concerned is made (and in any event within 5 working days after the decision is made), give the person a written notice that indicates:	12 13 14 15 16 17
(a) the agency’s decision about whether the person was entitled to object, and	18 19
(b) (if the agency has decided that the person was entitled to object) the agency’s decision on whether to include the information in its disclosure log.	20 21 22
[18] Section 56 (5) and (6)	23
Omit “the applicant” wherever occurring.	24
Insert instead “an authorised objector”.	25
[19] Section 60 Decision to refuse to deal with application	26
Insert after section 60 (1) (b):	27
(b1) the applicant has previously been provided with access to the information concerned under this Act or the <i>Freedom of Information Act 1989</i> ,	28 29 30
[20] Section 68 Advance deposit for payment of processing charge	31
Omit “4 weeks” from section 68 (3) (c). Insert instead “20 working days”.	32

[21] Section 80 Which decisions are reviewable decisions	1
Omit “the access applicant” wherever occurring in section 80 (m).	2
Insert instead “an authorised objector”.	3
[22] Section 82 Right of internal review	4
Omit “or if the agency is a Minister” from section 82 (2).	5
Insert instead “or a Minister (or a member of the Minister’s personal staff)”.	6
[23] Section 89 Right to have decision reviewed by Information Commissioner	7
Omit section 89 (2). Insert instead:	8
(2) A reviewable decision must be the subject of an internal review by the agency under this Part before it can be reviewed by the Information Commissioner unless:	9
(a) the aggrieved person is the access applicant, or	10
(b) an internal review of the decision is not available to the aggrieved person under this Part.	11
[24] Section 90 Time limit for applying for review by Information Commissioner	12
Omit “8 weeks”. Insert instead “40 working days”.	13
[25] Section 93 Recommendation for reconsideration of matter by agency	14
Omit section 93 (6) (including the note). Insert instead:	15
(6) No fee is payable for any reconsideration (including by way of an internal review) of a decision pursuant to a recommendation of the Information Commissioner.	16
[26] Section 101 Time for applying for ADT review	17
Omit “8 weeks” from section 101 (1). Insert instead “40 working days”.	18
[27] Section 101 (2)	19
Omit “4 weeks”. Insert instead “20 working days”.	20
[28] Section 106 Decisions about Cabinet and Executive Council information	21
Omit “Minister administering this Act” wherever occurring in section 106 (4) and (5).	22
Insert instead “Premier”.	23
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[29] Section 125 Reports to Parliament	1
Omit “Department of Premier and Cabinet” from section 125 (5).	2
Insert instead “Department of Attorney General and Justice”.	3
[30] Section 126 Requirements for notices given by agencies	4
Insert after section 126 (1):	5
(1A) A notice or notification under this Act that an agency is required or permitted to give a person may be given by:	6
(a) posting the notice to the person at the postal address provided by the person for correspondence in connection with the matter concerned, or	7
(b) such other method as may be agreed by the agency and the person.	8
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	12
[31] Section 127 Waiver, reduction or refund of fees and charges	13
Insert at the end of the section:	14
Note. See section 51A concerning the effect of a waiver, reduction or refund of the fee for an access application.	15
	16
[32] Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure	17
	18
Insert at the end of clause 1:	19
(2) Subclause (1) does not apply in relation to the disclosure of a spent conviction (within the meaning of the <i>Criminal Records Act 1991</i>) to the person who was convicted.	20
	21
	22
[33] Schedule 1, clause 5 (2)	23
Omit “An agency in whose favour legal professional privilege exists”.	24
Insert instead “If an access application is made to an agency in whose favour legal professional privilege exists in all or some of the government information to which access is sought, the agency”.	25
	26
	27
[34] Schedule 3 Savings, transitional and other provisions	28
Insert at the end of clause 1 (1):	29
<i>Government Information (Public Access) Amendment Act 2011</i>	30

[35] Schedule 3, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Government Information (Public Access) Amendment Act 2011	3 4 5
6 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Government Information (Public Access) Amendment Act 2011</i> .	8 9
7 Application of amendments to pending access applications	10
(1) Section 55, as amended by the amending Act, extends to access applications made before its amendment.	11 12
(2) Section 56, as in force before its amendment by the amending Act, extends to access applications made (but not decided by an agency) before its amendment.	13 14 15
8 Application of changes to time periods	16
An amendment made to this Act by the amending Act that alters a period of time for the taking of action under this Act does not apply to a person in connection with a matter arising before the amendment's commencement if the result of applying the amendment would be to deny the person a right to take action that the person would have had but for the amendment.	17 18 19 20 21 22
9 Existing publication guides taken to be agency information guides	23
Any guide that was a publication guide for an agency immediately before the commencement of Schedule 1 [2] to the amending Act is taken to be the agency information guide for that agency until a new guide is required to be adopted by the agency under this Act.	24 25 26 27 28
[36] Schedule 4 Interpretative provisions	29
Insert in alphabetical order in clause 1:	30
<i>authorised objector</i> —see section 56.	31

[37] Schedule 4, clause 6A	1
Insert after clause 6:	2
6A Regulations may declare part of an agency to be separate agency	3
The regulations may declare that a specified office, branch or other part of an agency is for the purposes of this Act to be regarded as being a separate agency to the agency of which it forms part.	4 5 6 7
[38] Schedule 4, clause 8	8
Omit “A reference”.	9
Insert instead “Subject to any regulations made for the purposes of clause 6A, a reference”.	10 11

Schedule 2	Amendment of other legislation	1
2.1	Commission for Children and Young People Act 1998 No 146	2
	Section 43 Obtaining and correcting information on relevant employment proceedings under Government Information (Public Access) Act 2009	3
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		5
	Omit “Part 6A” from section 43 (3). Insert instead “Section 15”.	6
2.2	Criminal Records Act 1991 No 8	7
	Section 13 Unlawful disclosure of information concerning spent convictions	8
		9
	Insert after section 13 (4A):	10
	(4B) It is not an offence for a public authority or other government agency that has a record of a spent conviction (or an authorised officer of the authority or agency) to make information about the conviction available to the person who was convicted.	11
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2.3	Privacy and Personal Information Protection Act 1998 No 133	15
		16
[1]	Section 3 Definitions	17
	Insert at the end of the definition of <i>public sector agency</i> in section 3 (1):	18
	Note. Section 4B enables the regulations to declare that a public sector agency is to be regarded as being part of another public sector agency for the purposes of this Act. It also enables the regulations to declare that a part of a public sector agency is to be regarded as being a separate public sector agency from the public sector agency of which it forms part for the purposes of this Act.	19
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[2]	Section 4B	25
	Insert after section 4A:	26
	4B Regulations may declare whether agency is part of or separate from a public sector agency	27
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	(1) The regulations may declare that:	29
	(a) a specified public sector agency is not to be regarded as a separate public sector agency and instead is to be regarded for the purposes of this Act as part of and included in another specified public sector agency, or	30
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	(b) a specified office, branch or other part of a public sector agency is for the purposes of this Act to be regarded as	34
		35

being a separate public sector agency to the public sector agency of which it forms part in respect of specified functions that it exercises.	1 2 3
(2) The regulations may make provision for or with respect to the application of this Act (with such modifications, if any, as may be prescribed) for the purposes of a declaration under this section.	4 5 6
(3) The Minister must, before recommending the making of a regulation under this section, consider whether the making of a declaration under this section will permit the sharing of personal information between public sector agencies and, if so, whether the sharing of that information would be appropriate in the circumstances.	7 8 9 10 11 12
2.4 Privacy Code of Practice (General) 2003	13
Schedule 3 Modification of information protection principles applying to ageing, disability and home care service agencies	14 15
Omit “disclosure” from clause 6 (2) (b). Insert instead “use”.	16