



**Australian Government**

**Office of the Australian Information Commissioner**

# **Review of charges under the *Freedom of Information Act 1982***

**Discussion Paper**

**October 2011**

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## Foreword

Fees and charges have always played a central and at times contentious role in the operation of the *Freedom of Information Act 1982* (FOI Act).

The policy of the FOI Act is that agencies can impose charges to recoup some of the costs incurred in processing FOI requests. This ability to impose a charge also plays a practical part in the discussions that are held between agencies and applicants about defining and managing the scope of requests.

On the other hand, the FOI Act recognises that charges can impede the exercise by the community of the right to seek access to government documents. A stated object of the Act is that it should be administered 'as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost'. Agencies also have a discretion under the Act not to impose a charge or to waive or reduce a charge.

FOI charges have figured prominently in much of the debate about the operation of FOI laws in Australia. Some complain that charges are assessed or imposed by agencies so as to frustrate access to government information. Others counter that only minimal charges are collected and that the true cost of FOI to Australian government and the community is understated.

Important legislative changes were introduced in 2010 to the FOI fees and charges regime. Those changes abolished application fees and reduced the charges that agencies can impose.

In introducing those changes, the Australian Government recognised the importance and sensitivity of this step and foreshadowed that the Australian Information Commissioner would be asked to commence a review of the charges regime within a year of these changes commencing. The Minister for Privacy and Freedom of Information, the Hon Brendan O'Connor MP, issued terms of reference for this inquiry on 7 October 2011.

Public and agency consultation is intended to play a central role in this review of charges. This Discussion Paper provides information and questions to assist that consultation. Consultation arrangements are explained at the end of the paper.

Please join the Office of the Australian Information Commissioner in contributing to this important review of FOI principles and administration in Australia.

Prof. John McMillan  
Australian Information Commissioner

28 October 2011

## Executive summary

This discussion paper sets out the issues to be considered by the Australian Information Commissioner in the review of the current charging regime under the FOI Act. The paper explains the scope of the review and provides a brief historical background to the charging framework, including the key principles of the current regime under the FOI Act. It provides a statistical breakdown of the total amount of fees and charges collected since the commencement of the FOI Act, against the backdrop of the total requests received and estimated cost of processing FOI requests. The paper also summarises the various charging regimes in other Australian and overseas jurisdictions. Agencies' and applicants' views are sought on the impact of the practical operation of the charging framework.

The discussion paper highlights the following key matters:

- The scale of charges set in the *Freedom of Information (Charges) Regulations 1982* (the Charges Regulations) is not subject to indexation and has not increased since November 1986.
- Between the commencement of the FOI Act on 1 December 1982 and 30 June 2011, Australian Government agencies have reported a total cost of \$498,364,739 to process the 906,639 FOI requests received during that period. The majority of requests are for documents containing personal information: in 2010–11, requests for personal information accounted for 82.63% of all requests.
- Since 1997–98, the cost of administering the FOI Act has steadily increased. However, the total amount of fees and charges collected has consistently been less than 5% of the yearly cost of administering the FOI Act, ranging from 0.33% (1982–83) to 4.91% (1994–95) with the yearly average at approximately 2%.
- The volume of charges collected has decreased significantly from 78.72% of the charges notified in 1991–92 to 9.60% in 2009–10. This could be attributed to several factors, including an agency imposing a charge less than the estimated charge, the applicant withdrawing or narrowing the scope of their request upon receiving the estimated charge, and the agency exercising its discretion under s 29 to waive or reduce the charge on the basis that it could cause the applicant financial hardship or that access to the document is in the public interest.
- Prior to the abolition of application fees for FOI requests and internal review in 2010, application fees accounted for over 40% of total fees and charges collected (2009–10).
- The charging models adopted by most Australian jurisdictions are similar to the charging model that existed under the Commonwealth FOI Act prior to the 2010 reforms. Tasmania is unique in that there is no fee or charge other than the \$35 application fee. Some of the charging models of the overseas jurisdictions surveyed vary greatly from the Commonwealth FOI Act model. For example, in the United States, the scale of charges is to be prescribed by each agency and the level of charges that may be imposed varies based on the purpose for seeking

information and who the applicant is. The United Kingdom and Scotland are also unique in that an agency has the discretion to refuse to process a request if the estimated cost exceeds the prescribed limit (£600 for central government, legislative bodies and the armed forces, or £450 for all other public authorities in the UK and £600 for all in Scotland).

# Part 1: About the review

## Scope of the review

On 7 October 2011, the Minister for Privacy and Freedom of Information, the Hon Brendan O'Connor MP, asked the Australian Information Commissioner to undertake a review of the charges regime under the FOI Act. The review is to consider the following matters:

- the role of fees and charges in freedom of information
- the impact on applicants and agencies of the current charging regime
- options for change to the fees and charges regime
- whether the decision to impose charges, or the nature or level of charges imposed, should vary according to the nature of the request or the applicant, and
- any other related matter.

In conducting this review, the Information Commissioner has also been asked to undertake consultation with users of FOI and other stakeholders, Australian Government agencies and the Information Advisory Committee (IAC), and to have regard to:

- the objects of the FOI Act
- the costs to agencies in processing FOI requests
- practices in other Australian and international jurisdictions.

## Outline of discussion paper

Part 1 outlines the scope of the review and the structure of the discussion paper. The remainder of the paper is divided into six parts:

**Part 2** provides a background to the FOI Act, including the 2010 reforms and their impact on the current charging regime.

**Part 3** outlines the current charging regime under the FOI Act.

**Part 4** provides a statistical overview of the costs of seeking access to documents under the FOI Act against the fees and charges collected, as reported by agencies.

**Part 5** provides an overview of the charging practices in other Australian and selected international jurisdictions.

**Part 6** outlines the issues for consideration and the consultation questions.

**Part 7** sets out the next steps in relation to the consultation process.

## Part 2: The *Freedom of Information Act 1982*

### Overview

This Part provides an overview of the FOI Act. It sets out the historical background to the FOI Act leading up to reforms that commenced in 2010, particularly in relation to the framework for charges.

### The FOI Act

The basic purposes of the FOI Act are:

- to improve the quality of decision making by government agencies in both policy and administrative matters by removing unnecessary secrecy surrounding the decision making process
- to enable groups and individuals to obtain access to information about the functioning of the decision making process as it affects them and to know the kinds of criteria that will be applied by government agencies in making those decisions
- to develop further the quality of political democracy by assisting all Australians to participate knowledgeably in the political process
- to enable individuals, except in limited and exceptional circumstances, to obtain access to information about them held on government files, so that they may know the basis on which decisions are made that can fundamentally affect their lives and may have the opportunity of correcting information that is untrue or misleading.<sup>1</sup>

The FOI Act provides a legally enforceable right of access to government documents. It provides a mechanism for individuals to access information about them held on government files, and to seek to correct that information if they consider it is wrong or misleading.

The FOI Act commenced operation on 1 December 1982. As a general rule, an Australian Government agency will be subject to the FOI Act unless expressly provided otherwise. 'Agency' is defined as a department of the Australian Public Service, or a prescribed authority (s 4(1)). The right of access to documents extends to the 'official documents of a minister' (ss 11(1)(b), 11A). A minister includes a parliamentary secretary. An 'official

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<sup>1</sup> Senator the Hon Gareth Evans, Attorney-General, *Foreword: Annual Report on the Operation of the Freedom of Information Act 1982 for the period 1 December 1982 to 30 June 1983* (Canberra, AGPS, 1983).

document of a minister' means a document in a minister's possession in their capacity as a minister, being a document that relates to the affairs of an agency or Department of State (s 4(1)).<sup>2</sup>

The FOI Act also establishes a framework for agencies and ministers to impose charges to process FOI requests. The original regulations under the FOI Act prescribed a range of charges to be applied to search and retrieval, supervision of inspection of documents, photocopying and transcription. Until 1 November 2010, the regulations also prescribed application fees for making an FOI request or applying for internal review.

Agencies and ministers have the discretion to waive a charge. Where an agency or minister decides to impose a charge, the FOI Act also provides applicants a right to seek review of the decision or to request that a charge be wholly or partly remitted.

### **Related reviews and reports on the operation of the FOI Act**

The FOI Act has been reviewed a number of times since its commencement. Major reports on the Act and its administration include:

- Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Operation and Administration of the Freedom of Information Legislation* (1987)
- Australian Law Reform Commission (ALRC) and Administrative Review Council (ARC), *Open Government: A Review of the Federal Freedom of Information Act 1982* (1995)
- Commonwealth Ombudsman, *Needs to Know: Own Motion Investigation into the Administration of the Freedom of Information Act 1982 in Commonwealth Agencies* (1999)
- Australian National Audit Office, *Administration of Freedom of Information Requests* (2004)
- Commonwealth Ombudsman, *Scrutinising Government: Administration of the Freedom of Information Act 1982 in Australian Government Agencies* (2006).

### **Joint Australian Law Reform Commission (ALRC) and Administrative Review Council (ARC) report**

The joint ALRC-ARC report looked specifically at the cost of seeking access to information under the FOI Act. It came to the view that:

[A]gencies should continue to be able to impose charges for FOI access to documents, other than access to the applicant's personal information. Although charging for access to

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<sup>2</sup> The term does not extend to the personal documents of a minister or the minister's staff, documents of a party political nature, or documents held in the minister's capacity as a local member of parliament unless the correspondence concerns an agency within the minister's portfolio. A person may also make a request to an agency for access to a document held by a contractor or subcontractor relating to the performance of a 'Commonwealth contract' entered into on or after 1 November 2010. These documents are included in the definition of 'document of an agency' (s 4(1)) where the agency has taken contractual measures in accordance with s 6C.

information undoubtedly reduces its accessibility, some form of contribution from applicants is appropriate. The current fees and charges regime is, however, too complicated and penalises applicants for agencies' inefficient information management practices.<sup>3</sup>

The final report made several recommendations relating to the charging regime, including:

- Access to an applicant's personal information should be free.
- Agencies should only be able to impose charges in respect of documents that are released. Charges should be assessed in accordance with a fixed scale that has been determined on the basis of a realistic assessment of what information technology and record management systems an agency could reasonably be expected to be using. The scale should be developed by the FOI Commissioner<sup>4</sup> in consultation with the Chief Government Information Officer and reviewed annually.
- The \$30 application fee should remain and be used as credit towards any charges imposed.
- The FOI Commissioner should set photocopying and transcribing charges.
- The regulation that prescribes a charge for supervising inspection of documents should be repealed.
- The \$40 fee for internal review should be abolished.
- The provisions relating to the general discretion to remit, waive or reduce charges should be clarified.<sup>5</sup>

### ***Other influential reports***

In 2007, Australia's Right to Know Coalition commissioned an independent audit into the state of free speech in Australia. The report<sup>6</sup> was completed in October 2007 and covered a broad range of issues, including the operation of FOI legislation at both the Commonwealth and State levels. The report addressed the issue of high-cost barriers to information access under FOI legislation. It noted that FOI charging regimes (covering document search and retrieval, for example) provided no incentive to improve inefficient record keeping. Moreover, excessive charges could be used to deter unwelcome FOI requests.<sup>7</sup>

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<sup>3</sup> ALRC Report 77, ARC Report 40, *Open Government: A Review of the Federal Freedom of Information Act 1982*, 1995, p 185 (ALRC-ARC Report).

<sup>4</sup> The ALRC-ARC report also recommended the creation of the statutory position of FOI Commissioner: see recommendation 19.

<sup>5</sup> ALRC-ARC Report 1995, see recommendations 87–96.

<sup>6</sup> Australia's Right to Know Coalition, *Report of the Independent Audit into the State of Free Speech in Australia 2007*.

<sup>7</sup> Australia's Right to Know Coalition, *Report of the Independent Audit into the State of Free Speech in Australia 2007*, p 133.

In 2007, Dr David Solomon AM chaired an FOI Independent Review Panel which carried out an inquiry into Queensland's FOI legislation.<sup>8</sup> In its report (known as the Solomon Report), the Review Panel addressed the existing charges regime in Queensland assessing issues such as:

- the complexity of the charging regime
- the difficulty for agencies of assessing FOI charges prior to processing a request
- the risk that charges limit FOI accessibility
- agency costs in fulfilling requests greatly exceeding allowable charges
- inconsistencies in how agencies determined charge amounts
- excessive charges to deter FOI requests and problems with poor record keeping.<sup>9</sup>

While the inquiry was specific to the Queensland Act, it raised a range of issues relevant to other jurisdictions and was the first Australian review of FOI to explore options for a 'push' model of greater proactive and routine release of information. Like the ALRC-ARC report, the Solomon Report recommended that applicants should not be charged for access to their own personal information.<sup>10</sup> It also suggested that the charging system needed simplification and proposed charges for the number of full pages provided to the applicant<sup>11</sup> rather than charges for searching for, or retrieval of, documents, or for decision making. It also recommended retaining the application fee (other than for requests for the applicant's own personal information).<sup>12</sup>

## 2010 reforms

In the lead up to the 2007 federal election, the Australian Labor Party (ALP) (then in Opposition) committed to reforming the FOI Act and implementing the recommendations of the ALRC-ARC inquiry. In a 2007 policy statement, the ALP stated its intention of reviewing FOI charges to ensure they were not incompatible with the objects of disclosure and transparency.<sup>13</sup>

After an inquiry by the Senate Finance and Public Administration Legislation Committee,<sup>14</sup> the *Freedom of Information (Reform) Act 2010* and the *Australian Information Commissioner Act 2010* (AIC Act) were enacted by the Parliament in May 2010. The reforms to the FOI Act and the passage of the AIC Act were the most significant reforms to FOI since 1981. The changes took effect from 1 November 2010, with the exception of the Information Publication Scheme requirements which commenced on 1 May 2011.

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<sup>8</sup> Queensland FOI Independent Review Panel, *The Right to Information: Reviewing Queensland's FOI Act 2008* (Solomon Report).

<sup>9</sup> Solomon Report 2008, chapter 14.

<sup>10</sup> Solomon Report 2008 p 190.

<sup>11</sup> Solomon Report 2008, recommendation 62.

<sup>12</sup> Solomon Report 2008, recommendation 61.

<sup>13</sup> Australian Labor Party *Government Information: Restoring trust and integrity*, Policy document, 2007, p 5.

<sup>14</sup> Senate Finance and Public Administration Legislation Committee, *Freedom of Information Amendment (Reform) Bill 2009 [Provisions], Information Commissioner Bill 2009 [Provisions]* 2010.

The reforms revised the objects clause to the FOI Act to emphasise Parliament's intention that the FOI Act facilitate and promote public access to information, promptly and at the lowest reasonable cost. As part of the 2010 FOI reforms, the fees and charges regime was partially amended by the *Freedom of Information (Fees and Charges) Amendment Regulations (No 1) 2010* which came into effect on 1 November 2010. Application fees, including fees for internal review, were abolished. This was a change from the pre-2010 regime, where agencies and ministers had authority to charge a \$30 application fee for FOI requests for access and a \$40 application fee for requests for internal review.

No charge applies to applicants seeking access to their own personal information. For all other applications, the first five hours of decision making time is free of charge. No charges are payable where an agency or minister fails to notify a decision within a period prescribed in the Act, unless the period has been extended before the deemed decision date and a decision is made within that extended period.

The reforms also established the Office of the Australian Information Commissioner (OAIC). The OAIC is headed by the Australian Information Commissioner, supported by the Freedom of Information (FOI) Commissioner, the Privacy Commissioner and the staff of the OAIC. The FOI Commissioner is chiefly responsible for the FOI functions, including the day to day administration of FOI enquiries and complaints. The FOI functions include promoting awareness and understanding of the FOI Act, undertaking merit review of FOI decisions, investigating complaints about FOI administration and monitoring agency compliance with the FOI Act.

## Part 3: Charges under the FOI Act

### Overview

This Part sets out the current fees and charges in the FOI Act and the Charges Regulations. A summary of the main legislative provisions is set out at Appendix A. Further information is available in FOI Guidelines published by the Australian Information Commissioner.<sup>15</sup>

### Application fees

As noted in Part 2, there is no application fee for making an FOI request. In particular, agencies and ministers may not charge for an application to access a document, an application to amend or annotate personal information, or an application for internal review of a decision. There is also no fee for applying for review by the Information Commissioner or for making a complaint to the Information Commissioner.

A fee is payable under reg 19 of the *Administrative Appeals Tribunal Regulations 1976* (AAT Regulations) for an application to the Administrative Appeals Tribunal (AAT) for review of a decision of the Information Commissioner. The fee, which is increased every two years in line with the Consumer Price Index, was \$777 on 1 July 2011. The fee does not apply in prescribed circumstances that include an application by a person receiving legal aid or holding a Commonwealth health care or pensioner concession card (reg 19(6)), or payment of the fee being waived by a Registrar, District Registrar or Deputy District Registrar on financial hardship grounds (reg 19(6A)). No fee is payable if the decision was made under the FOI Act and concerns a document which related to a decision under Schedule 3 to the AAT Regulations. This includes decisions about Commonwealth workers' compensation, family assistance and social security payments, and veterans' entitlements.<sup>16</sup>

### Scale of charges

The charges that an agency or minister may impose for an initial access decision are specified in the Schedule to the Charges Regulations. These charges cover activities such as search and retrieval time, decision making time, retrieval and collation of electronic information, transcription and photocopying. **Table 1** sets out the charges listed in the Schedule to the Charges Regulations. The charges are not subject to annual or biennial indexation and have not increased since November 1986.

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<sup>15</sup> See Part 4 of the FOI Guidelines available on the OAIC website at [www.oaic.gov.au/publications/guidelines.html](http://www.oaic.gov.au/publications/guidelines.html). The Guidelines are issued by the Australian Information Commissioner under s 93A of the FOI Act. Agencies must have regard to these Guidelines when performing a function or exercising a power under the FOI Act.

<sup>16</sup> Further information is set out in the AAT's website at [www.aat.gov.au/FormsAndFees/Fees.htm](http://www.aat.gov.au/FormsAndFees/Fees.htm).

**Table 1: Charges listed in the Schedule to the Charges Regulations**

Activity item	Charge	Schedule
<b>Search and retrieval:</b> time spent searching for or retrieving a document	\$15 per hour	Part I, Item 1
<b>Decision making:</b> time spent in deciding to grant or refuse a request, including examining documents, consulting with other parties, and making deletions	First five hours: Nil Subsequent hours: \$20 per hour	Part I, Item 5
<b>Electronic production:</b> retrieving and collating information stored on a computer or on like equipment	Actual cost incurred by the agency or minister in producing the copy	Part I, Item 3 Part II, Items 4, 4A, 6
<b>Transcript:</b> preparing a transcript from a sound recording, shorthand or similar medium	\$4.40 per page of transcript	Part I, Item 4 Part II, Item 7
<b>Photocopy:</b> a photocopy of a written document	\$0.10 per page	Part II, Item 2
<b>Other copies:</b> a copy of a written document other than a photocopy	\$4.40 per page	Part II, Item 3
<b>Replay:</b> replaying a sound or film tape	Actual cost incurred in replaying	Part II, Item 5
<b>Inspection:</b> supervision by an agency officer of an applicant's inspection of documents or hearing or viewing an audio or visual recording	\$6.25 per half hour (or part thereof)	Part II, Item 1
<b>Delivery:</b> posting or delivering a copy of a document at the applicant's request	Actual cost	Part II, Item 8

There are two exceptions to the charges outlined in the Schedule to the Charges Regulations. First, there is no charge for providing access to an individual's own personal information under the FOI Act. Second, a charge cannot be imposed where a minister or agency provides access outside the statutory processing period (unless certain circumstances are met to enable an extension of the processing period). These exceptions are explained in more detail below.

### **Imposition of charges**

Under the current charges framework, an agency or minister has a discretion to impose or not impose a charge for access to a document. Any charge imposed must not exceed the charges set out in the Charges Regulations. When determining the appropriate

charge, the agency or minister must take account of the ‘lowest reasonable cost’ objective as set out in the objects clause of the FOI Act.

The Guidelines issued by the Information Commissioner under s 93A of the FOI Act state that a charge must not be used to discourage an applicant from exercising the right of access conferred by the FOI Act.<sup>17</sup> The Guidelines also state that charges should fairly reflect the work involved in providing access to documents and agencies should have sound record keeping practices so that an agency’s documents can be readily identified and found when an FOI request is received.<sup>18</sup> Applicants are not to be disadvantaged by poor or inefficient record keeping.<sup>19</sup>

Section 29(1) of the FOI Act provides that an applicant must be given notice in writing when an agency or minister decides that the applicant is liable to pay a charge. The notice must contain certain information, including the applicant’s right to contend that the charge is wrongly assessed or should be reduced or waived.

## Exceptions

As noted above, there is no charge for an individual seeking access to their personal information. Personal information is defined in s 4(1) of the FOI Act as ‘information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’. The information may be private in nature or publicly known. It may be factual, descriptive or an opinion about that individual. The decisive quality is the connection between the information and an individual.<sup>20</sup>

A document that contains personal information of an applicant can fall within this exemption even if the document also contains non-personal information. If the personal information forms a small part of a document and an agency or minister can reasonably be expected to expend extra time or resources in providing access to the entire document, it may be appropriate in that situation for the agency or minister to impose a charge for providing access to the portion of the document that does not contain personal information. Before doing so, the agency or minister should consult with the applicant about narrowing the scope of the request to that part of the document that contains the applicant’s personal information.<sup>21</sup>

There is also no charge where a minister or agency fails to meet the allowable statutory processing period for making an FOI decision. The statutory processing period (30 calendar days) may be extended where a minister or agency needs to consult with an affected third party, by agreement with the applicant or where the Information Commissioner grants an extension.

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<sup>17</sup> Part 4 of the FOI Guidelines, paragraph 4.3.

<sup>18</sup> Part 4 of the FOI Guidelines, paragraph 4.3.

<sup>19</sup> Part 4 of the FOI Guidelines, paragraph 4.31.

<sup>20</sup> Part 4 of the FOI Guidelines, paragraph 4.14.

<sup>21</sup> Part 4 of the FOI Guidelines, paragraph 4.15.

As noted in Table 1, there is no charge for the first five hours of the time spent in making an access decision (Schedule, Part I, Item 5). There is no equivalent free time for the search and retrieval of documents.

## Collection of charges

When notifying an applicant of a charge, an agency or minister may require the applicant to pay a deposit (ss 29(1), 29(3), reg 13). The deposit cannot be higher than \$20 if the notified charge is between \$25 and \$100, or 25% of a notified charge that exceeds \$100 (reg 12). The agency or minister can defer work on the applicant's request until the deposit is paid or a decision is made to waive the charge following a request from the applicant.<sup>22</sup>

If an applicant is liable to pay a charge, the charge should be paid before the applicant is given access to documents (s 11A(1)(b), reg 11(1)). An exception applies if the charge is for supervising an applicant's personal inspection of documents or hearing or viewing an audio or visual recording (reg 11(2)). Payment of the charge cannot be required in advance of the inspection or viewing, unless the agency or minister has made a decision under reg 9(3) estimating the probable length of the period of inspection or viewing.<sup>23</sup>

## Correction, reduction or waiver of charges

An applicant who receives a notice advising that a charge is payable may apply in writing to the agency or minister for the charge to be corrected, reduced or waived (s 29(4)). If an applicant contends that a charge has been wrongly assessed, the central issue to be considered is whether relevant provisions of the FOI Act and the Charges Regulations have been correctly understood and applied.<sup>24</sup> If, on the other hand, an applicant contends that a charge should be reduced or waived, the agency or minister has a general discretion to decide:

- whether payment of the charge, or part of it, would cause financial hardship to the applicant or a person on whose behalf the application was made, and
- whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public (s 29(5)).<sup>25</sup>

The application should set out the applicant's reasons for contending that the charge has been wrongly assessed or should otherwise be reduced or waived (s 29(1)(f)(ii)).<sup>26</sup>

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<sup>22</sup> Part 4 of the FOI Guidelines, paragraph 4.27.

<sup>23</sup> Part 4 of the FOI Guidelines, paragraph 4.29.

<sup>24</sup> Part 4 of the FOI Guidelines, paragraph 4.43.

<sup>25</sup> Part 4 of the FOI Guidelines, paragraph 4.44.

<sup>26</sup> Part 4 of the FOI Guidelines, paragraph 4.43.

The agency or minister must provide a written notice of a decision regarding a review of a charge to the applicant within 30 days. If the decision is to deny the applicant's request in whole or in part, the notice of decision must set out the reasons for the decision and the applicant's right to seek internal or Information Commissioner review (IC review) of that decision or to make a complaint to the Information Commissioner and the procedure for doing so (s 29(8)–(10)).<sup>27</sup>

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<sup>27</sup> Part 4 of the FOI Guidelines, paragraph 4.43.

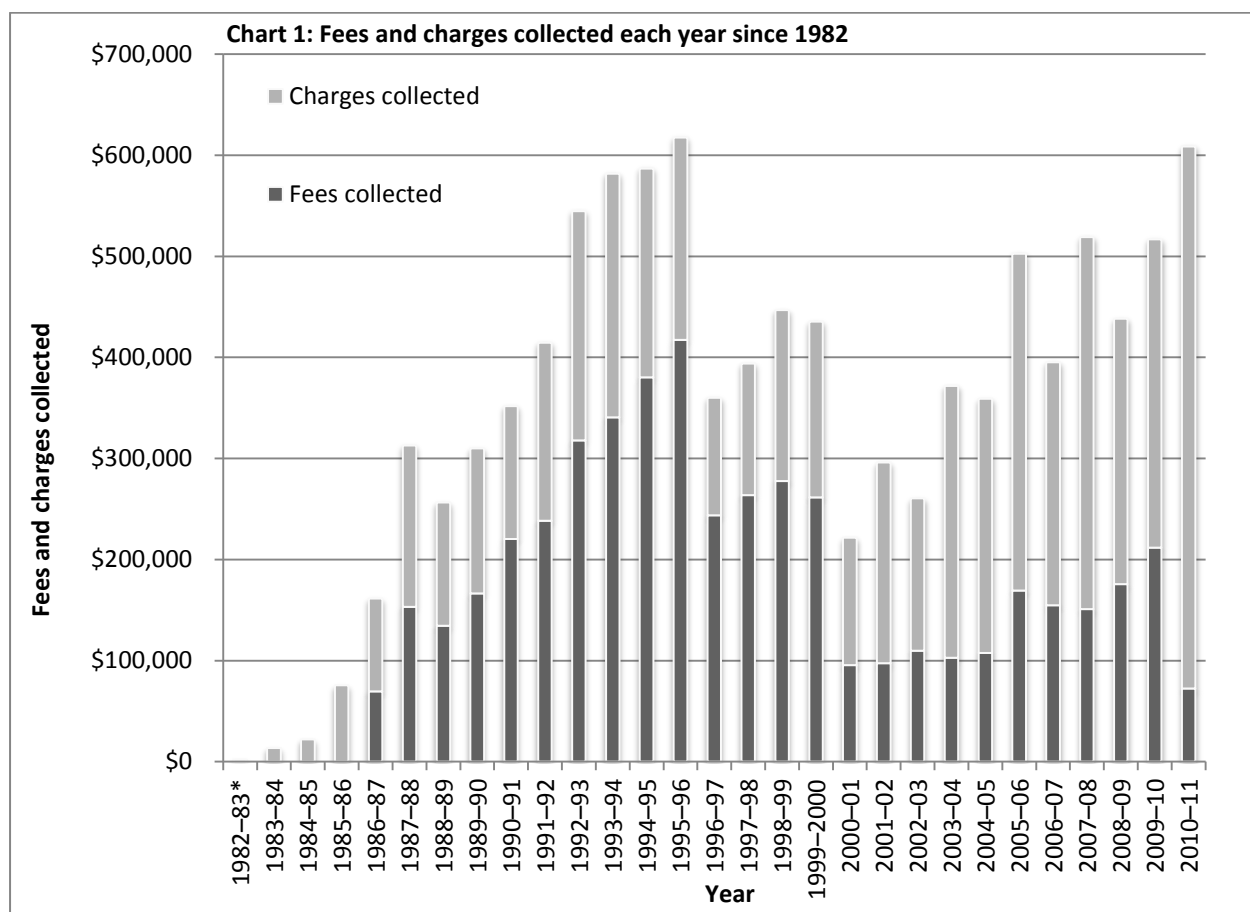
## Part 4: Use of the FOI Act

### Overview

This Part provides an overview of the fees and charges collected by agencies against the cost of processing FOI requests as reported by agencies since the commencement of the FOI Act. References to agencies include references to ministers unless otherwise indicated. **Appendix B** sets out in detail the costs of administering the FOI Act, the fees and charges collected and the number of FOI requests received each year since 1982.

### Fees and charges

Between 1 December 1982 (the date of commencement of the FOI Act) and 30 June 2011, Australian government agencies collected a total of \$10,374,079 in fees and charges. The total comprised \$4,931,296 (47.53%) in application/internal review fees and \$5,442,783 (52.47%) in charges. **Chart 1** sets out the fees and charges collected each year since 1982.



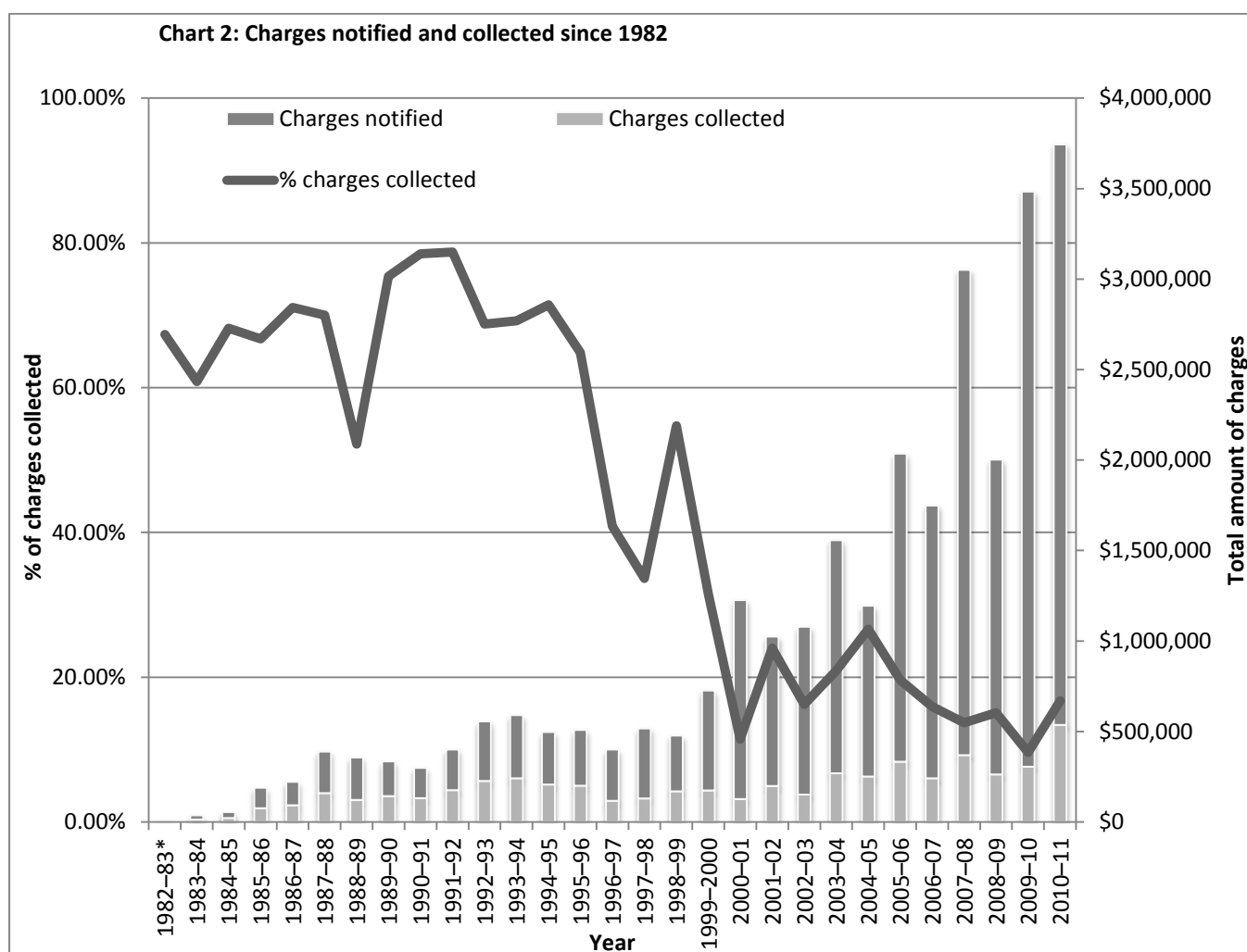
\* 7 months only

## Fees

**Chart 1** shows that the total amount of application fees increased steadily since 1986, reaching its peak in 1996–97 to form more than 67.7% of the total fees and charges collected. The total amount of fees collected declined sharply in 2000–01,<sup>28</sup> but started to increase again reaching almost 41% of the total amount of fees and charges collected in 2009–10. The total amount of fees collected fell sharply in 2010–11. This can be explained by the abolition of application and internal review fees from 1 November 2011.

## Charges

**Chart 2** shows the relationship between the charges notified and collected since 1982.



\* 7 months only

<sup>28</sup> The decline was largely due to the decrease in application fees collected by the then Department of Immigration and Multicultural Affairs. Fees collected fell from \$191,380 in 1999–2000 to \$11,515 in 2000–01. This was a result of the Department implementing a recommendation of the Commonwealth Ombudsman in the 1999 report *Needs to Know*, that agencies not impose fees where applicants make FOI requests for their own personal information.

**Chart 2** highlights that the total charges collected decreased significantly from 78.72% of the charges notified in 1991–92 to 9.60% in 2009–10. This may be due to a number of factors, including:

- the agency imposed a charge less than the estimated charge
- the applicant withdrew or narrowed the scope of their request upon receiving the estimate charge, and
- the agency exercised its discretion under s 29 to waive or reduce the charge on the basis that it could cause the applicant financial hardship or that access to the document is in the public's interest.

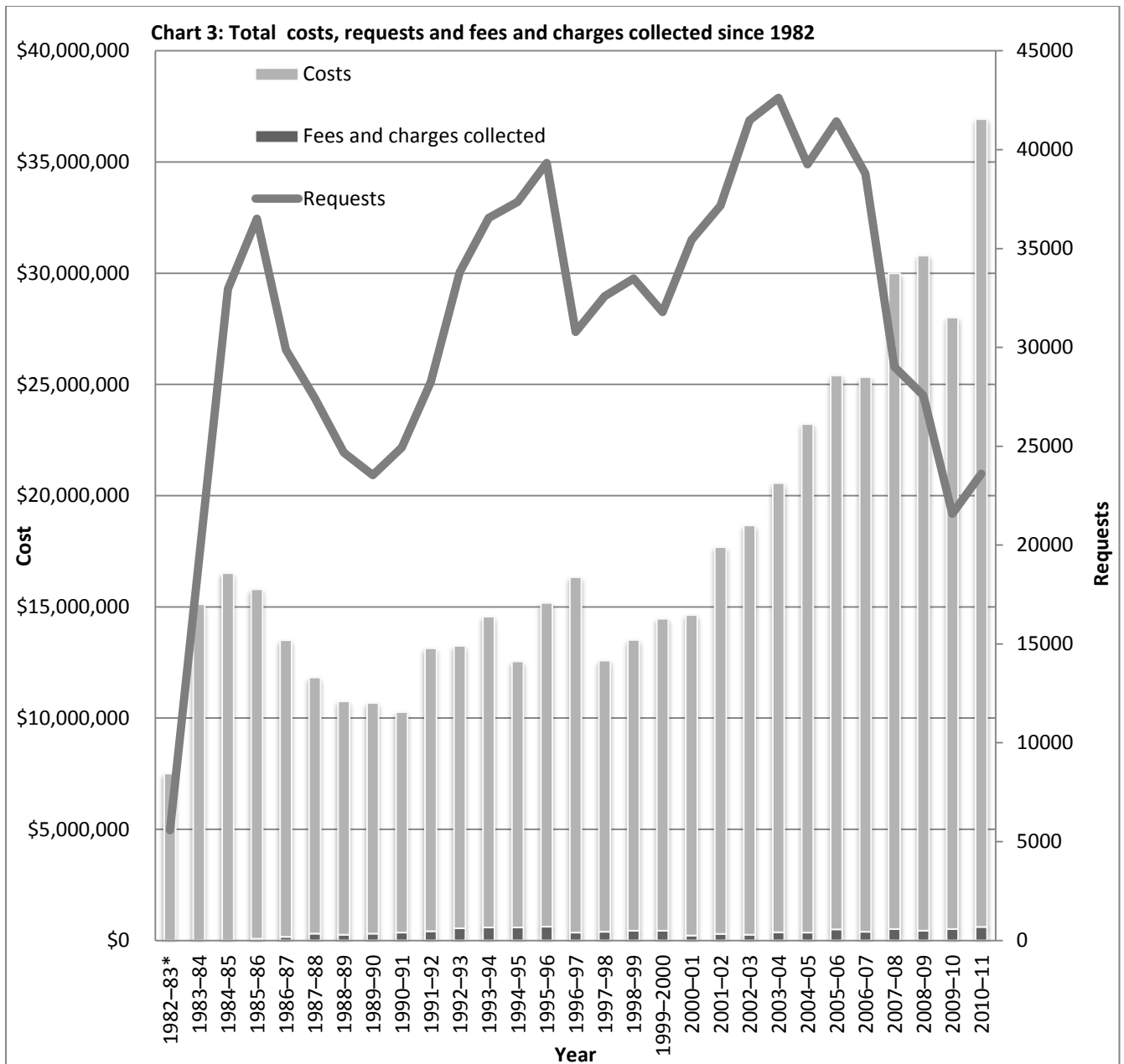
### **Cost of FOI requests**

Between the commencement of the FOI Act and 30 June 2011, Australian Government agencies reported a total cost of \$498,364,739 to process the 906,639 FOI requests received during this period.

The total cost reported includes staff hours spent on FOI matters and estimates of non-labour costs directly attributable to FOI (such as training and legal costs) as submitted by agencies. However, it has been suggested that agencies rarely keep exact records of hours spent by officers on FOI matters and other non-labour costs incurred.

The total amount of fees and charges collected represents 2.08% of the estimated total cost of administering the FOI Act during the same period. Since the commencement of the FOI Act, fees and charges collected in any year have consistently been less than 5% of the total cost of administering the FOI Act, ranging from 0.33 % (1982–83) to 4.91% (1994–95), with the yearly average at 2%.

**Chart 3** shows the relationship between the total fees and charges collected, the total estimated cost of FOI processing and the number of FOI requests received for each financial year since 1982.



\* 7 months only

**Chart 3** illustrates that between 2005–06 and 2009–10, the number of requests decreased from 41,430 to 21,587 (47.89% decrease), with requests received remaining at 23,605 in 2010–11. Although there has been a general decline in the number of FOI requests received by agencies since a peak in 2003–04, the number of requests received in 2010–11 was 9.3% higher than in 2009–10. Since the commencement of the FOI reforms in November 2010, agencies have reported anecdotally that the number of requests for documents and information, both within and outside of the FOI Act, has increased. This may be due in part to greater awareness of the right of access under the FOI Act and of information rights generally following the commencement of the FOI reforms and the establishment of the Oaic.

Since 1997–98, the cost of administering the FOI Act has steadily increased, while the total amount of fees and charges collected has remained static and represents only a nominal percentage of the estimated cost of administering the FOI Act.

## Nature of requests received

Since 2000–01, agencies have reported separately the number of FOI access requests received for documents containing personal information and for documents containing ‘other’ information. A request for personal information means a request for documents that contain information about a person who can be identified. A request for ‘other’ information means a request for all other documents, such as documents concerning policy development and government decision making.

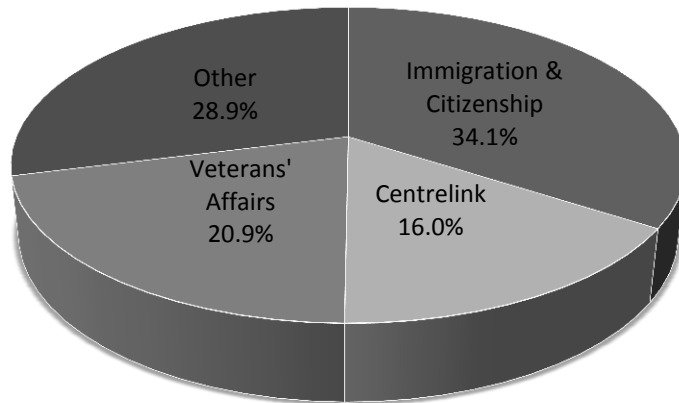
**Table 2** sets out the total number of ‘personal’ and ‘other’ requests received by agencies each year since 2000–01. It can be seen that the large majority of requests are for documents containing personal information.

**Table 1: Breakdown of requests since 2000–01**

Year	Personal requests	Other requests	Total
2000–01	31,777 (89.67%)	3,662 (10.33%)	35,439
2001–02	33,403 (89.87%)	3,766 (10.13%)	37,169
2002–03	38,120 (91.90%)	3,361 (8.10%)	41,481
2003–04	38,870 (91.19%)	3,757 (8.81%)	42,627
2004–05	35,748 (91.04%)	3,517 (8.96%)	39,265
2005–06	35,066 (84.64%)	6,364 (15.36%)	41,430
2006–07	33,625 (86.69%)	5,162 (13.31%)	38,787
2007–08	24,684 (85.06%)	4,335 (14.94%)	29,019
2008–09	22,033 (79.94%)	5,528 (20.06%)	27,561
2009–10	18,823 (87.20%)	2,764 (12.80%)	21,587
2010–11	19,504 (82.63%)	4,101 (17.37%)	23,605

Centrelink, the Department of Immigration and Citizenship and the Department of Veterans’ Affairs continue to receive the majority of requests for personal information. Commonly, requests to these agencies are from customers or clients seeking access to documents containing their own personal information. **Chart 4** shows these agencies’ share of the total number of requests received by all agencies in 2010–11.

**CHART 4: Agencies receiving majority of FOI requests in 2010–11**



## Part 5: Charging practices of other jurisdictions

This Part sets out the charging practices of other Australian and international jurisdictions.

### Australia

#### Overview

The charging models adopted by most other Australian jurisdictions are similar to the charging model that existed under the Commonwealth FOI Act prior to the 2010 reforms.

With the exception of the Australian Capital Territory (ACT), all Australian jurisdictions impose an application fee to make an FOI request.

With the exception of Tasmania, agencies in all other Australian jurisdictions can impose charges to meet the cost of search, retrieval or production of documents. In the ACT, Northern Territory (NT), Queensland, Western Australian (WA) and Victoria, no charges are imposed for requests relating to personal information about the applicant. In New South Wales (NSW), no charges apply to the first 20 hours of a processing request relating to personal information about the applicant. Similarly in South Australia, no charges apply to the first two hours of processing a request involving the applicant's personal information. Tasmania is unique in that there are no fees or charges beyond the \$35 application fee.

All states and territories have, in some form, a discretion to either waive or reduce the charges imposed. With the exception of Tasmania, all states and territories also have internal and/or external review mechanisms available for applicants who wish to seek review of a decision to impose a charge.

#### Australian Capital Territory

There is no application fee for a request for documents or an application for review of a decision on an application made under the *Freedom of Information Act 1989* (ACT). FOI fees and charges are determined under the Attorney General (Fees) Determination 2011 (ACT).<sup>29</sup>

An agency or a minister may impose a charge of \$23 per hour to meet the cost of search and retrieval. The first 10 hours of decision making are free, after which an agency or minister may impose a charge at the rate of \$19.20 per hour in deciding whether to grant access, refuse or defer access to a document or to grant access to a document with deletions (including the time spent in examining a document, consulting with any person or body, making a copy with deletions or notifying any interim or final decision on the request). The first 200 pages scanned or copied are free with subsequent pages charged at the rate of \$0.30 per page.

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<sup>29</sup> The Attorney General (Fees) Determination 2011 (ACT) applies in relation to the current financial year. A new determination is issued at the commencement of each financial year.

A charge cannot be imposed for access to a document about the personal affairs of the applicant or the person on whose behalf the application is made. Giving an Aboriginal or Torres Strait Islander access to a document for the purpose of assisting that person to re-establish links to a community or family from whom he or she was separated as a result of past policies of an Australian Government is at no cost.

Before an FOI request is processed, the agency or minister may make an estimate of the charges that might reasonably be imposed. An agency or minister may require the applicant to pay a deposit of the estimate.

An applicant may apply in writing to the agency or minister seeking total or partial remission of any charges payable. The agency or minister may take into account whether the payment of any charge would cause or has caused financial hardship, whether the document requested relates to personal information about the applicant, or whether the giving of access is in the general public interest.

Decisions relating to charges are reviewable by the agency or minister.

### ***New South Wales***

An applicant can be required to pay a \$30 application fee for a request for documents and a \$40 fee for application for a review of a decision made under the *Government Information (Public Access) Act 2009* (NSW). FOI fees and charges are set out in the Act.

An agency may impose a processing charge at the rate of \$30 per hour for each hour of processing time. The application fee contributes to the first hour of the processing charge. The processing charge covers the total amount of time dealing efficiently with the application (including consideration of the application, searching for records, consultation, decision making and any other function exercised in connection with deciding the application), or providing access in response to the application (based on the lowest reasonable estimate of the time needed to provide that access). If a person applies for their own personal information, the agency cannot impose any processing charge for the first 20 hours.

An agency may require an applicant to make an advance payment of any processing charge of up to 50% of the amount the agency estimates to be the total processing charge (ignoring any reduction to which the applicant may be entitled).

If an agency does not decide an access application within time (a deemed refusal), any application fee is to be refunded and no processing charge can be imposed.

An applicant is entitled to a 50% reduction in any processing charge if the agency is satisfied that the applicant is suffering financial hardship. The agency may take into account whether the applicant provides evidence that the applicant is the holder of a Pensioner Card, is a full-time student, or is a non-profit organisation (including a person applying on behalf of a non-profit organisation). Additionally, an agency may reduce the processing charge by 50% if the information is of special benefit to the public generally.

The decision to impose a processing charge is reviewable by the agency. Additionally, an applicant has the right to have the agency's decision reviewed by the Information Commissioner (NSW).

### **Northern Territory**

An applicant must pay a \$30 application fee for requests for information made under the *Information Act 2003* (NT). There is no application fee for requests relating to personal information. Fees are set out in the *Information Regulations 2010* (NT).

An agency may charge a processing fee equal to the total cost of the services and materials provided in response to an application. This includes charging \$25 per hour or part of an hour for search and retrieval, decision making, supervising examination of information by the applicant, and operating equipment to copy or view media. Black and white A4 photocopies are available at the rate of \$0.20 per page. There are no search and retrieval, decision making or supervision costs for access to personal information.

Actual costs may be charged for costs associated with:

- copies of media or written transcripts
- search and retrieval for information in secondary storage
- hiring facilities
- other services to enable an applicant to access the information including packaging material and delivery charges.

An agency may waive or reduce an application fee or processing fee by having regard to the applicant's financial hardship and the objects of the Act. An agency may also not charge an application fee or processing fee if the application is made by a member of the Legislative Assembly, is for access to government information in a report brought into existence by a public sector employee or consultant, or if the report describes an event or situation arising from an investigation, inquiry or observation.

The decision to impose an application or processing fee is reviewable by the agency. Additionally, a person aggrieved by a decision of an agency to charge a fee may make a complaint to the Information Commissioner (NT) about the decision.

### **Queensland**

An applicant can be required to pay a \$39 application fee for a request for documents under the *Right to Information Act 2009* (Qld). Fees and charges are set out in the *Right to Information Regulations 2009* (Qld).

The first five hours of processing time (search and retrieval, and decision making) is free. If an agency or minister spends more than five hours processing the application, it may impose a processing charge of \$6 per 15 minutes of processing time over five hours. There is no processing charge for access to personal information.

An access cost can be imposed at the rate of the actual cost incurred by the agency or minister to engage another entity to search for and retrieve documents, relocate

documents, create written documents or transcriptions, and otherwise provide access. Black and white A4 photocopies are charged at the rate of \$0.20 per page.

An agency or minister may waive or reduce a processing or access charge for an applicant who provides evidence of financial hardship, including if the applicant holds a concession card or is a non-profit organisation. Additionally, an agency or minister may waive a processing charge or access charge if they consider the likely associated costs to the agency or minister would be more than the likely amount of the charge.

A decision to impose a charge is reviewable by the agency. Additionally, an applicant may apply to have the decision reviewed by the Information Commissioner (QLD).

### **South Australia**

An applicant can be required to pay a \$29.50 application fee for a request for documents and \$29.50 for an application for a review of a decision made under the *Freedom of Information Act 1991 (SA)*. There is no application fee to access Cabinet documents between 10 and 20 years old. Fees and charges are set out in the *Freedom of Information (Fees and Charges) Regulations 2003*.<sup>30</sup>

An agency may charge \$11 per 15 minutes spent by the agency dealing with the application for access. However, the first two hours are free if the application is for personal information. The rate for photocopies is \$0.15 per page and written transcripts \$6.60 per page. Agencies can recover the actual cost incurred by producing copies of other media. If the cost of dealing with an application is likely to exceed the application fee, an agency may request the applicant to pay an advance deposit.

An agency must waive or remit a fee or charge if the applicant is a concession card holder or the payment of the fee or charge would cause financial hardship to the applicant. An agency may waive, reduce or remit fees in other circumstances.

The decision to impose a fee or charge is reviewable by the agency. Additionally, a person dissatisfied with the decision of an agency on an application for review of a fee or charge may apply to the State Ombudsman or Police Complaints Authority for further review.

A Member of Parliament is entitled to access to documents without charge unless the work generated by the application involves fees and charges totalling more than \$1000.

### **Tasmania**

An applicant can be required to pay a \$35 application fee (25 fee units<sup>31</sup>) for requests for assessed disclosure of information made under the *Right to Information Act 2009 (TAS)*.

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<sup>30</sup> The current *Freedom of Information (Fees and Charges) Regulations 2003* were issued on 1 July 2011 and have an expiry date of 1 September 2014.

<sup>31</sup> The way fee units are set and calculated is set out in the *Fee Units Act 1997 (TAS)*. The Fee Units Act provides for the automatic indexation of most Tasmanian Government fees in line with movements in the Consumer Price Index for Hobart. For more information see [www.tenders.tas.gov.au/domino/df/df.nsf/v-ecopol/5D8E36BF957730DDCA2578880019C068](http://www.tenders.tas.gov.au/domino/df/df.nsf/v-ecopol/5D8E36BF957730DDCA2578880019C068).

The application fee may be waived if the applicant is 'impecunious', the applicant is a Member of Parliament acting in connection with his or her official duty, or the applicant is able to show that he or she intends to use the information for a purpose that is of general public interest or benefit.

There are no other fees or charges in addition to the application fee.

The Tasmanian Ombudsman can hear appeals under the Right to Information Act against a refusal of an agency to provide access to documents in accordance with a request. This review function does not extend to charges decisions.

### **Victoria**

An applicant can be required to pay a \$24.40 application fee (2 fee units<sup>32</sup>) for a request for documents under the *Freedom of Information Act 1982* (VIC). Charges are set out in the *Freedom of Information (Access Charges) Regulations 2004*.<sup>33</sup>

An agency or minister may impose search and retrieval charges of \$20 per hour or part of an hour. A charge may be made for the reasonable costs incurred by an agency or minister in supplying copies of documents, in making arrangements for viewing documents, in providing written transcripts, and in creating written documents from information collated from a computer or other equipment. If an applicant is provided with the opportunity to inspect the document, supervision is charged at rate of \$5 per 15 minutes or part thereof. Black and white A4 photocopies are charged at the rate of \$0.20 per page. Costs of a suitably qualified health service provider providing an explanation or summary of health information are also specified.

An agency or minister may request a deposit on charges which exceed \$25 and discuss with an applicant practical alternatives for altering the request or reducing the anticipated charge.

There is no charge if the request is for access to a document containing information relating to the personal affairs of the applicant and the payment of the charge would cause financial hardship to the applicant.

The decision to impose a charge is reviewable by the agency or minister. Additionally, an applicant can apply to the Victorian Civil and Administrative Tribunal for review of charges imposed.

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<sup>32</sup> The way fee units are set and calculated is set out in the *Monetary Units Act 2004* (VIC). The value of one fee unit is currently \$12.22. The Victorian Government has a policy of automatically indexing certain fees and fines each year for inflation so that the value of those fees and fines is maintained. For more information see [www.dtf.vic.gov.au/CA25713E0002EF43/pages/economic-and-financial-policy-taxation-and-revenue](http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/economic-and-financial-policy-taxation-and-revenue).

<sup>33</sup> The *Freedom of Information (Access Charges) Regulations 2004* will sunset 10 years after the day of making on 29 June 2014 (see s 5 of the *Subordinate Legislation Act 1994* (SA)).

## **Western Australia**

An applicant can be required to pay a \$30 application fee for a request for non-personal information under the *Freedom of Information Act 1992 (WA)*. Fees and charges are set out in the *Freedom of Information Regulations 1993 (WA)*.

An agency may charge for staff time taken to deal with an application, supervise access, photocopy or transcribe information at the rate of \$30 per hour or pro rata for part of an hour. Actual costs incurred by an agency may be charged for special arrangements to hire facilities or equipment, duplicate media, and for delivery, packaging and postage. There is no charge for access to personal information about the applicant.

An access charge must be waived or reduced if payment of the charge would cause financial hardship to the applicant.

The decision to impose a charge or require a deposit is reviewable by the agency. Additionally, an applicant can make a complaint to the Information Commissioner (WA) about an agency's decision to impose a charge or require the payment of a deposit.

## **Overseas jurisdictions**

### **Overview**

Some of the charging models in the overseas jurisdictions surveyed in this paper vary from the Commonwealth FOI Act model. Some jurisdictions require application fees for requests for information (Canada, Ireland and South Africa), while other jurisdictions simply charge for activities such as search and retrieval, reproduction of records and conversions into standard formats.

All jurisdictions have, in some form, the discretion to either waive or reduce the charges imposed. All jurisdictions also have internal and/or external review mechanisms available for applicants who wish to seek review of a decision to impose a charge.

The United Kingdom and Scotland are unique in that an agency has the discretion to refuse to process a request if the estimated cost exceeds the prescribed limit (£600 for central government, legislative bodies and the armed forces, or £450 for all other public authorities in the UK and £600 for all in Scotland).

The United States model also differs greatly from the Commonwealth FOI Act model. In the United States, the scale of charges is to be prescribed by each agency and the level of charges that may be imposed vary based on which category of 'requesters' the applicant falls under. Commercial use requesters may be charged fees for searching, processing (including reviewing for exemptions) and duplication. Educational institutions, non-commercial scientific institutions, and representatives of the news media are charged only for duplication fees (the first 100 requested pages are provided free of charge), while all other users are only charged for searching and duplication.

## **Canada**

An applicant can be required to pay a \$5 application fee for requests for information under the *Access to Information Act 1983* (Canada).<sup>34</sup> Fees and charges are set out in the *Access to Information Regulations (SOR/83-507)* (Canada).<sup>35</sup>

A fee can be charged at the rate of \$2.50 per person per 15 minutes for every hour in excess of five hours that is spent on search and preparation for non-computerised records. For machine readable records, an agency may require payment for the cost of production and programming (\$16.50 per minute for the cost of the central processor and all locally attached devices, and \$5 per person per 15 minutes for time spent).

A fee may be made where applicable for the reproduction of a record (or part thereof), or where the record (or part thereof) is produced in an alternative format. Photocopies of a page measuring no more than 21.5cm by 35.5cm are charged at the rate of \$0.20 per page. Rates are provided for microform and magnetic tape duplication as well as braille, large print, audio and computer disc.

An agency may require an applicant to pay a reasonable proportion of calculated fees as a deposit. It is also available to the agency to waive the requirement to pay a fee or to refund a fee paid for a request to access a record.

An applicant can complain to the Information Commissioner (Canada) if they are required to pay an amount that they consider unreasonable.

## **Cayman Islands**

There is no application fee for requests for information under the *Freedom of Information Law 2007* (Cayman Islands). Fees for standard formats are determined by the *Freedom of Information (General) Regulations 2008* (Cayman Islands).

An agency can charge a reasonable fee based on actual costs of searching for, reproducing, preparing and communicating the information in response to an access request. Black and white photocopies in all sizes are charged at the rate of \$1.00 per page, and colour at \$1.50 per page. Rates are also specified for photographic reproduction, microform duplication, transcripts, expedited service, packaging and delivery, as well as a range of digital file format conversions. Non-standard formats are produced at a price to be determined by the agency, not exceeding the actual material and labour costs incurred.

An applicant may request a waiver of fees and the agency may waive fees if the applicant is of inadequate means or for any other good reason.

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<sup>34</sup> From November 2010, the Office of the Information Commissioner of Canada is waiving the \$5 application fee for access requests as part of a pilot project for a six month period. This pilot project has been extended into 2011–2012. See [www.oic-ci.gc.ca/eng/lc-cj-make-request-demande-acces.aspx](http://www.oic-ci.gc.ca/eng/lc-cj-make-request-demande-acces.aspx).

<sup>35</sup> The *Access to Information Regulations (SOR83/507)* are current to 21 September 2011.

An applicant can seek an internal review of an agency's decision to charge a fee. If an applicant is dissatisfied with an agency's decision regarding fees, they can appeal to the Information Commissioner (Cayman Islands).

### **Ireland**

An applicant must pay a €15 application fee for requests for non-personal information, €75 for reviews of decisions, and €150 for reviews by the Information Commissioner under the *Freedom of Information Act 1987* (Ireland).<sup>36</sup>

Requests for personal information are free. Medical card holders or their dependents are entitled to a reduction in fees of €5 from the application fee for requests, €50 from the fee for reviews of decisions, and €100 from the fee for reviews by the Information Commissioner (Ireland). Fees are determined by the *Freedom of Information Act 1997 (Fees) Regulations 2003* (Ireland).

An agency may charge €20.95 per hour for search and retrieval. Photocopies are charged at the rate of €0.04 per page. Reproduction costs are also specified for digital media and x-rays.<sup>37</sup>

It is at the agency's discretion to reduce or waive a fee or deposit if some of all of the information concerned would be of particular assistance to the understanding of an issue of national importance. An agency can also not charge a fee if the cost of collecting and accounting for the fee, together with any other administrative costs incurred by the agency concerned in relation to the fee, would exceed the amount of the fee.

An applicant may apply for review of a decision to charge a fee or deposit by the agency and by the Information Commissioner (Ireland).

### **New Zealand**

There is no application fee for requests for information under the *Official Information Act 1982* (New Zealand).<sup>38</sup> Charges are determined by the Ministry of Justice Charging Guidelines for Official Information Act 1982 Requests, 18 March 2002 (New Zealand).<sup>39</sup>

An agency can charge for staff time of more than one hour for searching, abstracting, collating, copying, transcribing and supervising access for official (non-personal) information. An agency can also charge the applicant the actual cost of off-site retrieval and media reproduction.

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<sup>36</sup> The Principal Act was amended by the *Freedom of Information (Amendment) Act 2003* (Ireland).

<sup>37</sup> See FOI Central Policy Unit, Department of Finance CPU Notice No 11 Charges at [www.finance.gov.ie/viewdoc.asp?DocID=892&CatID=20&StartDate=01+January+1998](http://www.finance.gov.ie/viewdoc.asp?DocID=892&CatID=20&StartDate=01+January+1998).

<sup>38</sup> Government information can also be accessed under the *Local Government Official Information and Meetings Act 1987*.

<sup>39</sup> The *Ministry of Justice Charging Guidelines for Official Information Act 1982 Requests*, 18 March 2002 replaced those approved by the State Sector Committee in January 1992 (STA (92) M 1/3) and set out in the Department of Justice memorandum of 26 February 1992. See [www.justice.govt.nz/publications/global-publications/m/ministry-of-justice-charging-guidelines-for-official-information-act-1982-requests-18-march-2002/official-information-act](http://www.justice.govt.nz/publications/global-publications/m/ministry-of-justice-charging-guidelines-for-official-information-act-1982-requests-18-march-2002/official-information-act)

Staff time in excess of one hour can be charged at the rate of \$38 for the first chargeable half hour (or part thereof) and then \$38 for each additional half hour (or part thereof). The first 20 photocopies are free, with additional photocopies charged at the rate of \$0.20 per A4 page. An agency may require a deposit where the charge is likely to exceed \$76.

An agency can also recover the actual costs involved in producing and supplying information of commercial value. However, the full cost of producing it in the first instance should not be charged to subsequent requesters.

It is at an agency's discretion to reduce or waive charges on the grounds that payment might cause the applicant financial hardship. Other grounds include whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work; or if it would be in the public interest because it is likely to contribute significantly to public understanding of, or effective participation in, the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

The decision by an agency to impose a charge is a reviewable decision by the Ombudsmen (New Zealand).

### **Scotland**

There is no application fee for requests for information under the *Freedom of Information (Scotland) Act 2002*.<sup>40</sup> Costs and fees are set out in the *Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004*.

An agency can charge for costs incurred in locating, retrieving and providing information. Staff costs can be charged at the maximum rate of £15 per hour per staff member (although rates should reflect the staff member's normal salary). There is a threshold cost of £100 to the authority before a charge can be made, and a ceiling (excessive cost) of £600 beyond which authorities do not have to comply with information requests. Authorities may charge only 10% of the cost to the applicant.

An agency is not permitted to charge for decision making costs (deciding whether a document should be disclosed in full or in part), but the actual process of editing is chargeable.

It is at an agency's discretion to waive costs, including where the costs exceed the maximum threshold of £600.

An agency's decision to charge costs is a reviewable decision by the Information Commissioner (Scotland).

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<sup>40</sup> Government information can also be accessed under the *Environmental Information (Scotland) Regulations 2004* (environmental information) and the *INSPIRE (Scotland) Regulations 2009* (spatial datasets).

## **South Africa**

An applicant can be required to pay a R35 application fee for requests for information held by public bodies under the *Promotion of Access to Information Act 2000* (South Africa).<sup>41</sup> There is no application fee for personal information. Fees and charges are set out in the *Promotion of Access to Information Act 2000 Regulations Regarding the Promotion of Access to Information* (South Africa).<sup>42</sup>

An agency may charge R15 per hour or part of an hour, excluding the first hour, to search for and prepare the record for disclosure. Photocopies are charged at the rate of R0.60 per A4 copy and computer print-outs are R0.40 per A4 copy. Charges for transcription, copies of visual images, and production of digital media are also specified.

An agency may request one third of the access fee as a deposit if more than six hours are required to respond to the request. An applicant can apply for an exemption of the payment of a fee.

The decision to impose fees by an agency is a reviewable decision by the agency.

## **United Kingdom**

There is no application fee for requests for information under the *Freedom of Information Act 2000* (United Kingdom).<sup>43</sup> Costs and fees are set out in the *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (United Kingdom).

An agency can charge for costs incurred in searching, locating, retrieving and extracting information. Staff costs attributable to time that persons (both staff and external contractors) spend on these activities can be charged at £25 per person per hour regardless of actual cost. If the estimated cost to respond to a request of information exceeds the appropriate limit (£600 for central government, legislative bodies and the armed forces, or £450 for all other public authorities), an agency does not have to process the request. The agency must still confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.

An agency cannot charge for decision making and redacting (editing) costs.

Where the appropriate limit has not been reached, an agency can only charge reasonable fees to contact the applicant and communicate the information (including reproduction and delivery costs). The cost of staff time to carry out these activities cannot be taken into account, although the cost of materials and specialist equipment may be included in these fees.

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<sup>41</sup> The *Promotion of Access to Information Act 2000* allows access to information held by public and private bodies. Only prescribed fees in respect to public bodies are covered in this discussion paper.

<sup>42</sup> The *Promotion of Access to Information Act 2000 Regulations Regarding the Promotion of Access to Information* were gazetted as Regulations 187 on 15 February 2002. Regulations 187 replaced the previous Regulations 223 of 9 March 2001.

<sup>43</sup> Government information can also be accessed under the *Environmental Information Regulations 2004* (environmental information).

The decision by an agency to refuse an application on cost grounds (exceeding the appropriate limit) is a reviewable decision by the agency. In addition, applicants can complain to the Information Commissioner (United Kingdom).

### ***United States of America***

There are no application fees for requests for information under the *Freedom of Information Act 1966* (United States). The Act provides for the charging of certain fees in some instances and these are regulated by the Uniform Freedom of Information Act Fee Schedule and Guidelines 1987.<sup>44</sup> Each agency is required to publish regulations specifying the schedule of fees applicable to processing requests and must ensure its schedule conforms to the guidelines.

The Act provides for three categories of requesters: commercial use requesters; educational institutions, non-commercial scientific institutions, and representatives of the news media; and all other requesters. The first category, commercial use requesters, may be charged fees for searching, processing (including reviewing for exemptions) and duplication. The second category is charged only for duplication fees (the first 100 requested pages are provided free of charge). The third category is only charged for searching and duplication. For non-commercial-use requesters there is no charge for the first two hours of search time and the first 100 pages of duplication (or equivalent).

An applicant can include as part of their request for information a specific statement limiting the amount that they are willing to pay in fees. If no limiting statement is included, an agency can assume that the applicant is willing to pay fees up to \$25.

An applicant can ask to have a fee waived where disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the applicant's commercial interest. An applicant's inability to pay fees is not a legal basis for granting a fee waiver.

An agency's decision to impose fees is reviewable by administrative appeal to the agency. Once the administrative appeal process is complete, disputes on FOI matters can be mediated by the Office of Government Information Services, within the National Archives and Records Administration. Finally, an applicant can challenge an agency's decision in a federal court.

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<sup>44</sup> The Office of Management and Budget issued the Uniform Freedom of Information Act Fee Schedule and Guidelines in 1987. This uniform schedule is not a unitary schedule of fees, but rather recognises that the Act requires each agency's fees to be based upon its direct reasonable operating costs of providing Freedom of Information Act services. Instead, the uniform schedule creates categorical limitations on what fees could be charged.

## Part 6: Issues for consideration

The terms of reference for this review of the current charging regime require consideration of the following issues:

- the purpose and role of fees and charges in FOI and how this interacts with the objects of the FOI Act
- the impact of fees and charges on applicants
- the impact of the charging framework on agencies' workload
- the cost of processing FOI requests
- whether the category of the applicant should be taken into consideration when deciding to impose charges and what scale of charges would be relevant
- any options for change, including consideration of current charging regimes in similar jurisdictions in Australia and overseas as outlined in Part 5.

The following consultation questions aim to explore these issues in general, as well as from the experiences of users of the FOI Act.

### Consultation questions

#### *The role of fees and charges in the FOI Act*

##### *General questions*

1. What is the role of fees and charges in the FOI Act?
2. Do charges deter reasonable requests for access to information?

#### *Application fees*

##### *General questions*

3. Is it appropriate that the FOI Act does not impose an application fee for making:
  - an FOI request?
  - an FOI request for personal information?
  - an application for internal review of an access refusal or access grant decision?
  - an application for Information Commissioner review of an access refusal or access grant decision?
4. If you support FOI application fees, what level of fee should be imposed? Should it be subject to annual or biennial increase?

##### *For applicants*

5. Would application fees for FOI requests deter you from making an application?
6. Would fees for internal review or Information Commissioner review deter you from seeking review of an access refusal or access grant decision?

*For agencies*

7. What effect has the abolition of application fees had on FOI requests to your agency?
8. What effect has the abolition of fees had on applications for internal review in your agency?

***Scale of charges***

*General questions*

9. Is the scale of charges in the FOI Regulations appropriate (as set out in Table 2)? In particular, are the following charges appropriate?
  - search and retrieval: \$15.00 per hour
  - decision making: first five hours free and \$20 per subsequent hour
  - electronic production: actual cost incurred in producing the copy
  - transcript: \$4.40 per page
  - photocopy: \$0.10 per page
  - other copies: \$4.40 per page
  - replay: actual cost incurred
  - inspection: \$6.25 per half hour
  - delivery: actual cost incurred.
10. If the scale of charges needs to be amended, what level of charges should be imposed? Should they be subject to annual or biennial increase? Should they be capped?
11. Should a different approach be adopted to imposing charges? What form should it take? For example, should the agency's obligation to process a request be capped at a particular level, as in some countries? Or should the scale of a charge vary according to the nature of the applicant or the length of time taken to process the request?

***Imposition of charges***

*General questions*

12. In what circumstances should charges be imposed?
13. Is it appropriate that no charge is payable where the applicant is not notified of a decision on a request within the statutory time limit (including any extension)?

*For agencies*

14. In what circumstances does your agency impose charges?
15. What is the maximum charge that your agency has imposed? What is the typical range of charges that your agency has imposed?
16. Where charges are notified, does this result in narrowing the scope of the request?

17. Where charges are imposed, does this result in applicants withdrawing their requests?

*For applicants*

18. What has been your experience of agency practice in notifying and imposing charges? Do agencies adopt different or inconsistent practices, and if so, is this a concern?

19. Has a charges estimate resulted in you:

- withdrawing your request or
- narrowing your request?

**Exceptions**

*General questions*

20. Is it appropriate that requests involving an applicant's own personal information are free from charges?

**Collection of charges**

*For agencies*

21. Does your agency face difficulties in collecting charges? What is the cost to your agency of applying and collecting charges?

**Correction, reduction or waiver of charges**

*General questions*

22. Are there specific categories of applications that should not incur charges? Should charges be imposed where the applicant can demonstrate financial hardship?

23. In what circumstances should charges be reduced or waived? Does the public interest test for waiver of fees need to be amended?

24. If reduction or waiver of charges is sought, what evidence of financial hardship should be required?

*For agencies*

25. Are there specific categories of applications that should not incur charges? Should charges be imposed where the applicant can demonstrate financial hardship?

26. In what circumstances does your agency reduce or waive charges? When does your agency reduce or waive charges on the basis of the public interest?

27. Does your agency experience difficulties in refunding charges?

**Other issues**

28. Are there any other issues that should be considered that have not been included in this discussion paper?

## Part 7: Next steps

### Commenting on this discussion paper

The Australian Information Commissioner invites your comments on the matters raised in this discussion paper.

Submissions can be made to:

**Review of charges – Discussion Paper**

Office of the Australian Information Commissioner

GPO Box 2999

Canberra ACT 2601

Telephone: 1300 363 992

TTY: 1800 620 241 (no voice calls)

Email: [consultation@oaic.gov.au](mailto:consultation@oaic.gov.au).

**Where possible, comments in electronic format are preferred.** It would be helpful if comments addressed specific questions in this paper.

The closing date for comment is **21 November 2011**.

### Consultation hearings

The Australian Information Commissioner will be holding consultations in November 2011 in Canberra and Sydney. Details are available on the OAIC website at [www.oaic.gov.au](http://www.oaic.gov.au).

## Glossary

AAT	Administrative Appeals Tribunal
AAT Regulations	Administrative Appeals Tribunal Regulations 1976
ACT	Australian Capital Territory
AIC Act	<i>Australian Information Commissioner Act 2010</i>
ALP	Australian Labor Party
ALRC	Australian Law Reform Commission
ARC	Administrative Review Council
Charges Regulations	<i>Freedom of Information (Charges) Regulations 1982</i>
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i>
FOI Commissioner	Freedom of Information Commissioner
IAC	Information Advisory Committee
IC review	Information Commissioner review
Information Commissioner	Australian Information Commissioner
NSW	New South Wales
NT	Northern Territory
OAIC	Office of the Australian Information Commissioner
reg	regulation
s, ss	section(s)
SA	South Australia
Solomon Report	Queensland FOI Independent Review Panel, <i>The Right to Information: Reviewing Queensland's FOI Act 2008</i>
Tasmania	TAS
Western Australia	WA

## Appendix A: Summary of main legislative provisions for charges

Legislative provision <sup>45</sup>	Operation
Regulation 3	An agency or minister may decide that an applicant is liable to pay a charge at the rate fixed in the Schedule.
Section 29(1)	If an agency or minister decides that an applicant is liable to pay a charge, the applicant must be given a written notice of liability to that effect, including a preliminary assessment of the charge and all the matters set out in s 29(1).
Section 29(2)	If an applicant does not notify the agency or minister as required within 30 days (or such further period allowed by the agency) the FOI request is taken to have been withdrawn.
Section 29(4), (5), (6)	An agency or minister must, within 30 days of receiving an applicant's contention on charges, make a decision whether to correct, reduce or waive a charge. The agency or minister must take into account whether payment of the charge would cause financial hardship, or whether giving access would be in the public interest.
Section 29(7)	Failure by the agency or minister to make a decision within 30 days is taken to be a decision that the amount of the charge is the figure specified in the notice of preliminary assessment.
Section 29(8), (9)	If an agency or minister decides to reject an applicant's request to reduce or waive a charge, the applicant is to be given a written notice of the decision, the reasons for decision, and details of the applicant's right to complain to the Information Commissioner or seek an IC review.
Regulation 5	There is no charge for providing access to an applicant's personal information or for providing access outside the statutory processing period unless the Information Commissioner has extended that period.
Regulation 9	In issuing a notice of a charge under s 29, an agency or minister may estimate the charge (based on the Schedule) if all steps necessary to make a decision on the request have not yet been taken.
Regulation 10	An agency or minister may adjust an estimated charge, after taking all steps necessary to make a decision on a request.
Section 11A Regulation 11	An applicant shall pay the required charge before being given access to a document, except for a charge for an officer to supervise inspection, hearing or viewing of a document.
Regulation 12	An agency or minister may require an applicant to pay a deposit of \$20 for an estimated charge of between \$20 and \$100 or 25% of the estimated charge if greater than \$100.
Section 31	If an applicant is notified during the statutory processing period that a charge is payable, that period is extended until the applicant pays the charge or is notified by the agency following a review that no charge is payable.

<sup>45</sup> 'Section' refers to a section of the FOI Act. 'Regulation' refers to a regulation in the Charges Regulations.

## Appendix B: Fees and charges collected since the commencement of the FOI Act

Year	Number of requests received	Application fees received	Internal review fees received	Total fees collected (A)	Charges notified	Charges collected (%) (B)	Total fees and charges collected (A+B)	Total cost (C)	Fees and charges collected as % of total cost ((A+B)/C)
1982–83*	5576	\$0	\$0	<b>\$0</b>	\$3069	<b>\$2067 (67.35%)</b>	<b>\$2067</b>	\$7,502,355	0.03%
1983–84	19,227	\$0	\$0	<b>\$0</b>	\$22,247	<b>\$13,535 (60.84%)</b>	\$13,535	\$15,106,511	0.09%
1984–85	32,956	\$0	\$0	<b>\$0</b>	\$32,226	<b>\$21,977 (68.20%)</b>	\$21,977	\$16,496,961	0.13%
1985–86	36,512	\$0	\$0	<b>\$0</b>	\$113,043	<b>\$75,464 (66.76%)</b>	\$75,464	\$15,711,889	0.48%
1986–87	29,880	\$69,500	\$0	<b>\$69,500</b>	\$129,392	<b>\$91,990 (71.09%)</b>	\$161,490	\$13,336,864	1.21%
1987–88	27,429	\$148,030	\$5080	<b>\$153,110</b>	\$228,214	<b>\$159,760 (70.00%)</b>	\$312,870	\$11,506,931	2.72%
1988–89	24,679	\$130,400	\$4120	<b>\$134,520</b>	\$233,642	<b>\$121,951 (52.20%)</b>	\$256,471	\$10,494,376	2.44%
1989–90	23,543	\$163,180	\$3320	<b>\$166,500</b>	\$190,378	<b>\$143,498 (75.38%)</b>	\$309,998	\$10,373,321	2.99%
1990–91	24,929	\$216,365	\$4040	<b>\$220,405</b>	\$167,296	<b>\$131,309 (78.49%)</b>	\$351,714	\$9,921,772	3.54%
1991–92	28,247	\$233,760	\$4560	<b>\$238,320</b>	\$223,743	<b>\$176,128 (78.72%)</b>	\$414,448	\$12,723,097	3.26%
1992–93	33,804	\$309,766	\$8120	<b>\$317,886</b>	\$329,602	<b>\$226,723 (68.79%)</b>	\$544,609	\$12,702,329	4.29%
1993–94	36,547	\$336,139	\$4345	<b>\$340,484</b>	\$348,101	<b>\$241,075 (69.25%)</b>	\$581,559	\$13,977,360	4.16%
<b>1994–95</b>	37,367	\$374,396	\$5704	<b>\$380,100</b>	\$289,226	<b>\$206,687 (71.46%)</b>	\$586,787	\$11,955,482	4.91%
1995–96	39,327	\$413,044	\$4022	<b>\$417,066</b>	\$308,608	<b>\$200,166 (64.86%)</b>	\$617,232	\$14,564,562	4.24%
1996–97	30,788	\$237,839	\$5760	<b>\$243,599</b>	\$284,391	<b>\$116,223 (40.87%)</b>	\$359,822	\$15,972,950	2.25%

Year	Number of requests received	Application fees received	Internal review fees received	Total fees collected (A)	Charges notified	Charges collected (%) (B)	Total fees and charges collected (A+B)	Total cost (C)	Fees and charges collected as % of total cost ((A+B)/C)
1997–98	32,590	\$258,092	\$5580	<b>\$263,672</b>	\$386,726	<b>\$130,193 (33.67%)</b>	\$393,865	\$12,191,478	3.23%
1998–99	33,484	\$271,026	\$6540	<b>\$277,566</b>	\$308,689	<b>\$168,989 (54.74%)</b>	\$446,555	\$13,066,029	3.42%
1999–2000	31,784	\$256,172	\$5340	<b>\$261,512</b>	\$552,038	<b>\$173,649 (31.46%)</b>	\$435,161	\$14,035,394	3.10%
2000–01	35,439	\$89,815	\$5780	<b>\$95,595</b>	\$1,099,380	<b>\$126,052 (11.47%)</b>	\$221,647	\$14,415,406	1.54%
2001–02	37,169	\$91,684	\$5600	<b>\$97,284</b>	\$825,779	<b>\$198,551 (24.04%)</b>	\$295,835	\$17,387,088	1.70%
2002–03	41,481	\$104,059	\$5626	<b>\$109,685</b>	\$928,124	<b>\$150,636 (16.23%)</b>	\$260,321	\$18,398,181	1.41%
2003–04	42,627	\$95,507	\$7324	<b>\$102,831</b>	\$1,287,010	<b>\$268,947 (20.90%)</b>	\$371,778	\$20,189,136	1.84%
2004–05	39,265	\$101,924	\$5720	<b>\$107,644</b>	\$943,429	<b>\$251,297 (26.64%)</b>	\$358,941	\$22,860,022	1.57%
2005–06	41,430	\$161,203	\$8010	<b>\$169,213</b>	\$1,700,801	<b>\$333,341 (19.60%)</b>	\$502,554	\$24,903,771	2.02%
2006–07	38,787	\$147,966	\$6765	<b>\$154,731</b>	\$1,508,409	<b>\$240,458 (15.94%)</b>	\$395,189	\$24,936,178	1.58%
2007–08	29,019	\$141,638	\$9133	<b>\$150,771</b>	\$2,683,042	<b>\$368,077 (13.72%)</b>	\$518,848	\$29,474,653	1.76%
2008–09	27,561	\$165,226	\$10,228	<b>\$175,454</b>	\$1,739,706	<b>\$262,544 (15.09%)</b>	\$437,998	\$30,358,484	1.44%
2009–10	21,587	\$203,572	\$8040	<b>\$211,612</b>	\$3,177,732	<b>\$305,178 (9.60%)</b>	\$516,790	\$27,484,129	1.88%
2010–11	23,605	\$68,449	\$3787	<b>\$72,236</b>	\$3,207,827	<b>\$536,318 (16.72%)</b>	\$608,554	\$36,318,030	1.68%
Total	<b>906,639</b>	<b>\$4,788,752</b>	<b>\$142,544</b>	<b>\$4,931,296</b>	<b>\$23,251,870</b>	<b>\$5,442,783 (23.41%)</b>	\$10,374,079	\$498,364,739	2.08%

\* 7 months only