

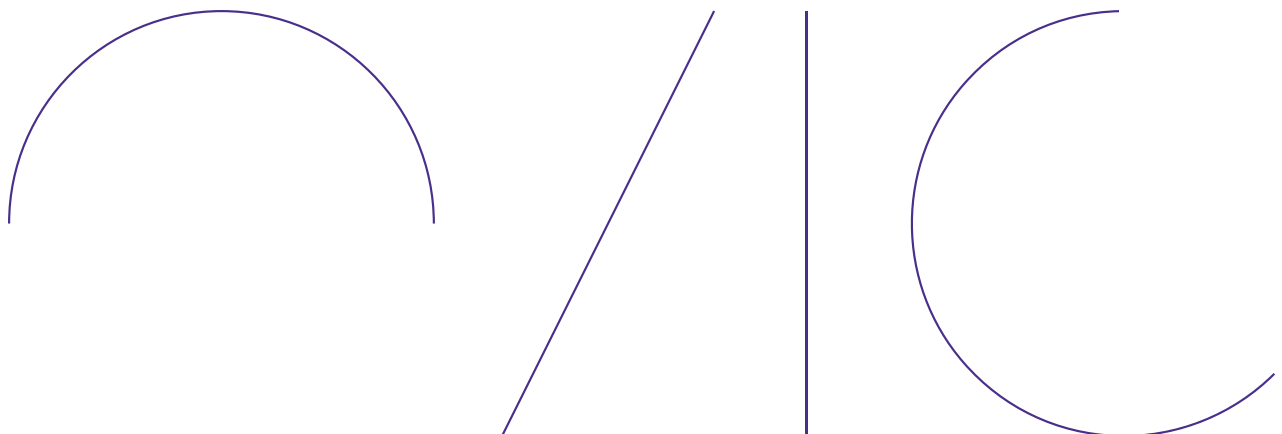


Office of the Victorian
Information Commissioner

Part II – Publication of certain documents and information

Freedom of Information Guidelines

FREEDOM OF INFORMATION



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References to legislation

All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

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Section 7 – Publication of certain documents and information

Extract of legislation

7 Publication of information concerning functions etc. of agencies

- (1) The responsible Minister of an agency, other than a council, shall—
- (a) cause to be published as soon as practicable after the commencement of this Part in a form approved by the Minister administering this Act—
 - (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, bodies and persons outside the government administration in relation to the formulation of policy in, or the administration of, the agency;
 - (ii) a statement of the categories of documents that are maintained in the possession of the agency;
 - (iii) a statement of the material that has been prepared by the agency under this Part for publication or for inspection by members of the public, and the places at which a person may inspect or obtain that material;
 - (iv) a statement listing the literature available by way of subscription services or free mailing lists;
 - (v) a statement of the procedure to be followed by a person when a request for access to a document is made to the agency;
 - (vi) a statement designating by name the officer or officers responsible within each agency for the initial receipt of, and action upon, requests for access to a document;
 - (vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are a part of, or that have been established for the purpose of advising, the agency, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection; and
 - (b) during the year commencing on 1 January next following the publication, in respect of an agency, of the statements under paragraph (a) that are the statements first published under that paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statements.
- (1A) Subsection (1) applies to an agency that is a council as if the reference to the responsible Minister of an agency were a reference to the council.

- (2) The approved forms under subsection (1) shall be appropriate for the purposes of assisting members of the public to exercise effectively their rights under this Act.
- (3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
- (4) The information to be published in accordance with this section by an agency, that is a department or prescribed agency, must be published by including it—
 - (a) in the annual report of the agency to the responsible Minister of the agency; or
 - (b) if there is no such annual report—in the annual report of the department, or a department administered, or part of which is administered, by the responsible Minister of the agency.
 - (i) the draft professional standards have been published; and
 - (ii) submissions may be made to the Information Commissioner on or before the date specified in the notice.
- (4A) Subsection (1) applies to an agency that becomes an agency on or after the commencement of section 5 of the **Freedom of Information (Amendment) Act 1993** as if references in that subsection to the commencement of this Part were references to the day on which that agency became an agency.
- (4AA) The information to be published in accordance with this section by an agency that is a council must be published—
 - (a) by including it in the annual report of the council under the **Local Government Act 2020**; or
 - (b) separately, as soon as practicable after the commencement of section 17 of the **Freedom of Information (Amendment) Act 1993** and at intervals of not less than 12 months.
- (5) Subject to subsection (6) of this section, section 15 shall not be read so as to require the responsible Minister of an agency to include in a statement of the categories of documents prepared under subsection (1)(a)(ii) information relating to any document in the custody of the Public Record Office of Victoria.
- (6) The statement of the categories of documents that are maintained in the possession of the Public Record Office of Victoria prepared under subsection (1)(a)(ii) by the Minister administering the **Public Records Act 1973** shall include a statement of the categories of all documents that are maintained in the custody of the Public Record Office of Victoria, including those documents to which section 15 applies.
- (7) The prescribed form of publication of the statement of the categories of documents prepared under subsection (1)(a)(ii) may be such as to allow for categories of documents that are maintained in common by more than one agency to be listed in a single statement prepared under subsection (1)(a)(ii) by the Minister administering the **Public Records Act 1973**.
- (8) For the purposes of this section, "statement of the categories of documents prepared under subsection (1)(a)(ii)" includes statements prepared under subsection (1)(b).

Relevant FOI Professional Standards

Professional Standard 1.3 A principal officer must ensure information statements published in accordance with Part II of the Act are available on their agency's internet site, where one exists.

Guidelines

Purpose of section 7

- 1.1. Section 7 requires an agency (including a local council)¹ to publish information summarising its organisation, functions, the categories of documents it holds, other public bodies it supports (for example, committees of management, cemetery trusts, and boards), and how FOI requests can be made.
- 1.2. This helps the public understand what each agency does, how it operates, and the types of documents it generates and holds. In turn, this enables the public to exercise their rights and understand any obligations when dealing with an agency more effectively.

Approved form

- 1.3. Despite section 7(1)(a) requiring several statements to be published 'in a form approved by the Minister administering the Act', there is no approved form for section 7. Nevertheless, an agency must implement the requirements of section 7. This should be done to help members of the public to effectively exercise their rights under the Act.²

Taking a practical approach

- 1.4. Agencies should take a practical approach to interpreting and implementing the requirements of section 7. Section 7 has not undergone any significant reform since it was first enacted, and its requirements are not compatible with the way modern government operates.

¹ *Freedom of Information Act 1982 (Vic)*, sections 7(1A) and 7(4AA).

² *Freedom of Information Act 1982 (Vic)*, section 7(2).

- 1.5. A literal interpretation of the requirements set out in section 7 is not practical, or beneficial for most members of the public.
- 1.6. An agency should aim to comply with the requirements, purpose, and intent of section 7, in the context of its purpose in Part II. At a minimum, this should involve offering members of the public sufficient information to understand an agency's functions and operations, and the documents it holds and creates. This is essential to the proper operation of the Act and the public's right to seek access to government held information.
- 1.7. There is no specific obligation to publish information in one location or under specified headings – for example, the traditional 'Statement 1'. This allows for flexibility in implementing and publishing the required information.
- 1.8. A 'statement' may in fact be information contained on a webpage that details the information required under a particular part of section 7. The use of an agency website offers ease of navigation, the ability to crosslink information, and the ability to allow the public to search for, view and download documents and information on demand.
- 1.9. For instance, the information required under section 7 might be made available across several existing and logical webpages on an agency's website, such as 'About us', 'Our functions', 'What we do', or 'Our Policies'. This can equally be applied to an agency's annual report.

For example, OVIC has implemented the requirements of section 7, section 8, and section 11 within OVIC's [About us](#) webpage.

This webpage does not specifically call out which information relates to each section in Part II, or detail information under explicit 'statement' headings.

Instead, the webpage sets out the required information and documents under headings that are easy to understand and navigate, as well as combining it with other relevant corporate material.

Publication in annual reports and on agency websites

- 1.10. The information required to be published under section 7 must be set out in the annual report of an agency.³ In addition, [Professional Standard 1.3](#) requires this information to be available on an agency's website, to promote the accessibility of information, in line with community expectations.

³ [Freedom of Information Act 1982 \(Vic\)](#), section 7(4), however note the requirement for councils is set out in section 7(4AA) and provides an additional option.

Exempt information or documents

1.11. There is no obligation to publish information under section 7 if that information would be exempt under Part IV.⁴

For more information, see [Part IV – Exempt documents](#).

Information that must be published under section 7(1)(a)(i)

1.12. Section 7(1)(a)(i) requires an agency to publish information that details the particulars of:

- the agency and its functions, indicating as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions; and
- any arrangement that exists for consultation with, or representation by, bodies or persons outside the government administration in relation to the formulation of policy in, or administration of, the agency.

1.13. A member of the public must be able to answer the following questions about an agency:

- Information detailing the particulars of the agency:
 - How or under what legislation is the agency established?
 - Who leads the agency?
 - How can the agency be contacted?
 - Who is the responsible Minister or Ministers?
 - What is the organisational structure of the agency?
 - What are the functions and purposes of the agency?
 - What Acts or subordinate legislation empower the agency's functions and operations?
- Information detailing the decision-making powers and other powers affecting members of the public:

⁴ [Freedom of Information Act 1982 \(Vic\)](#), section 7(3).

- What Acts or subordinate legislation does the agency rely on to make decisions that affect the public?
- What do these Acts or subordinate legislation allow the agency to do?
- Information detailing the particulars of any arrangements which exist for consultation with outside bodies in relation to policy formulation or administration:
 - Does the agency seek, or rely on the advice of, information from bodies or persons outside of the agency in relation to its policies or administration? For example, formal committees, reference groups, advisory boards.
 - If so, who are they and what do they do or advise the agency on?

Information that must be published under section 7(1)(a)(ii)

- 1.14. Section 7(1)(a)(ii) requires an agency to publish information on the categories of documents in the possession of the agency. At a minimum this should include a general description of the various categories of documents in the possession of the agency.
- 1.15. Possession may be physical possession or constructive possession. Constructive possession is where an agency has the right to call for the document and to control the document, such as a document in the physical possession of a contractor.⁵ This information can be useful to a member of the public in framing a request for information.
- 1.16. A member of the public must be able to answer the following question about an agency:
- What are the general categories or types of documents the agency holds and generates?

Information that must be published under section 7(1)(a)(iii)

- 1.17. Taking a contemporary approach to implementing Part II, section 7(1)(a)(iii) requires an agency to ensure the information and documents prepared, published, or made available under sections 7, 8 and 11, can be found by members of the public.
- 1.18. Individuals or members of the public should not be expected to have knowledge, or an understanding, of what Part II is or requires. It may even be unhelpful and not accessible to an ordinary member of the public for an agency to refer to 'Part II' by name, as this creates an expectation that the individual should know and understand what Part II entails.

⁵ *Office of the Premier v Herald and Weekly Times* [2013] VSCA 79; *Colonial Range Pty Ltd v Victorian Building Authority (Review and Regulation)* [2017] VCAT 1198.

1.19. If the required information is published, listed, or otherwise made available in easy to find and logical locations, this is sufficient.

Information that must be published under section 7(1)(a)(iv)

1.20. Section 7(1)(a)(iv) requires an agency to publish information detailing subscription services or mailing lists that individuals can register or sign up to.

1.21. A member of the public must be able to answer the following questions about an agency:

- Does the agency send newsletters or offer information by way of subscription?
- If so, how does an individual access these products or services?

Information that must be published under section 7(1)(a)(v)

1.22. Section 7(1)(a)(v) requires an agency to publish information detailing how an individual can make an FOI request under [section 17](#) or a request for amendment of personal records under [section 39](#).

1.23. A member of the public must be able to answer the following questions about an agency:

- What is the process for making a request for documents?
- What is the process for requesting an amendment to a document?

Information that must be published under section 7(1)(a)(vi)

1.24. Section 7(1)(a)(vi) requires an agency to publish information detailing who is responsible for processing requests under either section 17 or section 39.

1.25. A member of the public must be able to answer the following questions about an agency:

- Who is responsible for processing requests? For example, an individual's title or the name of the specific business unit.
- How can the individual responsible for processing requests be contacted?

Information that must be published under section 7(1)(a)(vii)

- 1.26. Section 7(1)(a)(vii) requires an agency to publish a list of all boards, councils, committees, and other bodies established to advise the agency whose meetings are open to the public or meeting minutes are available.
- 1.27. A member of the public must be able to answer the following questions about an agency:
- What bodies have been established by the agency to provide it advice and whose meetings are conducted publicly, or minutes published?
 - Where can an individual view a meeting of these bodies, if they are public, or download the minutes of their meeting?

Requirement to keep information up to date

- 1.28. An agency is required to review and update any information published under section 7(1)(a) at least once every twelve months.⁶ An agency should take the most practical and efficient approach to keeping this information up to date.
- 1.29. The most efficient approach may be to update or add new information on a regular basis. For example, where a function or the organisational structure changes, this could be reflected on an agency website immediately or soon after.

⁶ [Freedom of Information Act 1982 \(Vic\)](#), section 7(1)(b).

Section 8 – Certain documents to be available for inspection and purchase

Extract of legislation

8 Certain documents to be available for inspection and purchase

- (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use or guidance of, or are used or may be used by, the agency or its officers—
 - (a) in making decisions or recommendations, or in providing advice to persons outside the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled, eligible or subject, being—
 - (i) documents containing interpretations or particulars of Acts or schemes administered by the agency, not being particulars contained in another Act; or
 - (ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the agency, or similar documents containing rules, policies, guidelines, practices or precedents; and
 - (b) in enforcing Acts or schemes administered by the agency where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of the Acts or schemes.
- (2) The principal officer of an agency shall—
 - (a) as from a date as soon as practicable after the commencement of this Part—
 - (i) cause copies of all documents to which this section applies in respect of the agency to be made available for inspection and for purchase by members of the public; and
 - (ii) cause to be published in the prescribed form a statement (which may take the form of an index) specifying the documents that are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and
 - (b) within twelve months after the publication of the first statement under paragraph (a) and thereafter at intervals of twelve months, cause to be published in a prescribed form statements bringing up to date the information contained in the previous statement or statements.
- (3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

- (4) A document from which exempt matter has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt matter being disclosed, the nature of the matter excluded.
- (5) Notwithstanding the opinion of the principal officer that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt matter being disclosed, the principal officer of the agency shall cause that fact to be published.
- (6) An agency that comes into existence after the commencement of this Part shall comply—
 - (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the agency comes into existence and not later than twelve months after that day; and
 - (b) with the provisions of subsection (2)(b) as if the reference to "first publication" in that paragraph were a reference to first publication in compliance with this subsection.

Relevant FOI Professional Standards

Professional Standard 1.3 A principal officer must ensure information statements published in accordance with Part II of the Act are available on their agency's internet site, where one exists.

Guidelines

Purpose of section 8

- 1.1. Section 8 requires an agency (including a local council) to publicly list⁷ and make available for inspection and purchase⁸ documents relating to its 'internal laws'. Broadly this encompasses rules, policies, procedures, or guidelines currently used by an agency to make decisions or provide advice on matters that impact on the rights or liabilities of the public – whether that impact is beneficial or detrimental.
- 1.2. This gives the public access to documents used by the agency to make decisions or take actions and assists the public to understand why certain decisions or actions are taken.

⁷ *Freedom of Information Act 1982 (Vic)*, section 8(2)(ii).

⁸ *Freedom of Information Act 1982 (Vic)*, section 8(2)(i).

- 1.3. Section 8 only applies to documents that are currently used or may be used by agency officers; historical documents, previous versions, or documents no longer endorsed for use are not required to be listed.⁹

Materiality of the documents captured by section 8

- 1.4. It is useful to consider the context and purpose of section 8 when determining if a document falls within sections 8(1)(a)(i), 8(1)(a)(ii), or 8(1)(b).
- 1.5. In [Williams v University of Melbourne \(Review and Regulation\) \[2021\] VCAT 971](#), it was noted that:¹⁰

... a document will fall within s 8(1), if it has a certain degree of formality, and if it expresses rules or practices that are intended to promote consistent and best practice, and are sought to be applied broadly to all relevant instances of the exercise of a particular function of the agency, even if not mandatory.

...

... it is not all non-exempt documents of an agency which are to be made available under s 8. The descriptions in s 8(1) generally connote some of the more important documents, in terms of the agency's operations, and their effect on citizens. In tandem with s 11, and other mechanisms, such as annual reports, s 8 operates to provide transparency as to the activities of the agency in a general sense. There will be many documents which are not covered by Part II, but which are nevertheless non-exempt, and available to citizens on the agency's website, or on other public facing electronic platforms, or upon making an ordinary FOI request, or simply by asking for them.

- 1.6. Section 8(1) seeks to capture rules, policies, procedures, or guidelines that have a degree of formality in their use and are consistently applied across an agency.

A means to proactive release

- 1.7. Section 8 provides all agencies with legislative power to proactively release documents and information described in section 8, and to be transparent about the exemptions claimed over information in section 8 documents.

⁹ [Williams v University of Melbourne \(Review and Regulation\) \(Corrected\) \[2021\] VCAT 880 \(5 August 2021\)](#), [41]-[52].

¹⁰ [Williams v University of Melbourne \(Review and Regulation\) \[2021\] VCAT 971](#), [81]-[86].

1.8. To further this objective, the various words and phrases in section 8 should be broadly interpreted and given a plain language meaning.

What it means to be ‘available for inspection’

1.9. Section 8(2)(a)(i) requires all documents that fall within section 8(1) to be made available for inspection and purchase by members of the public.

1.10. In a contemporary context, and giving effect to the object of the Act, to be available for ‘inspection’ will typically mean:

- the document is publicly listed¹¹ on an agency website and can be provided to a member of the public on request, for example, by email; or
- the document is publicly listed¹² and published on an agency website making it available for download.

What it means to be ‘available for purchase’

1.11. The term ‘purchase’ in section 8(2) should be given its ordinary meaning, in that an agency may provide a document captured by section 8(1) to a member of the public in return for payment.

1.12. There is no amount prescribed in regulations for the documents listed under section 8(1), and the Act does not provide for regulations to be made setting an amount or prescribing how the amount is to be calculated.

1.13. While imposing a cost is discouraged, if an agency chooses to impose a purchase cost for documents captured by section 8(1), the cost should only be proportionate to any costs incurred by the agency in providing access or a copy of the document.

Prescribed form

1.14. Section 8(2)(a)(ii) requires a statement to be published ‘in the prescribed form’ outlining the documents which are available for inspection and purchase under section 8. While there is no prescribed form for section 8, an agency must implement this requirement.

¹¹ As required under section 8(2)(a)(ii).

¹² As required under section 8(2)(a)(ii).

1.15. As no form has been prescribed, there is no specific obligation to publish documents captured by section 8(1) in one location or under specified headings – for example, the traditional ‘Statement X’. This allows for flexibility in publishing the required documents.

Taking a practical approach

1.16. A practical approach to interpreting and implementing the requirements of section 8 should be taken. Section 8 has not undergone any significant reform since it was first enacted, and its requirements are not compatible with the way modern government operates.

1.17. An agency should aim to comply with the requirements, purpose, and intent of section 8, in the context of its purpose in Part II. An agency is encouraged to consider a practical approach to publishing relevant information that takes advantage of technology such as websites and online databases.

1.18. Relevant documents may be contained on a webpage or multiple webpages that logically categorise the rules, policies, procedures, and guidelines. The use of an agency website offers ease of navigation, the ability to crosslink information, and the ability to allow the public to search for, view and download documents and information on demand.

Exempt information in documents

1.19. Section 8 does not require an agency to make exempt matter available for inspection or purchase, or to publicly list an exempt document, where the listing would reveal exempt matter.¹³ However, where a section 8(1) document does contain exempt matter, section 8(3) promotes disclosure and transparency by still requiring the agency to, where practicable, prepare and make available an edited version of the document that removes the exempt matter,¹⁴ and to explain the nature of the matter excluded.¹⁵

1.20. Similarly, where a section 8(1) document is exempt in full, section 8(5) still requires an agency to publicly list the fact of the document’s existence if the listing can be made without disclosing exempt matter.¹⁶

¹³ [Freedom of Information Act 1982 \(Vic\)](#), section 8(3).

¹⁴ [Freedom of Information Act 1982 \(Vic\)](#), section 8(3).

¹⁵ [Freedom of Information Act 1982 \(Vic\)](#), section 8(4).

¹⁶ [Freedom of Information Act 1982 \(Vic\)](#), section 8(5).

1.21. Note that the exemptions in [sections 30\(1\)](#) and [32\(1\)](#) of the Act cannot be claimed over a document that falls within section 8(1).¹⁷

Types of documents captured by section 8(1)(a)(i)

1.22. Section 8(1)(a)(i) requires an agency to publicly list and make available for inspection and purchase documents that meet the following three criteria:¹⁸

- The document contains interpretations or particulars of Acts or schemes administered by the agency, not being particulars contained in another Act; **and**
- The document is currently used by, or guides the agency or its officers:
 - to make decisions or recommendations; **or**
 - to provide advice to individuals outside the agency; **and**
- The decision, recommendation or advice is with respect to any of the following matters that a member of the public may be entitled, eligible or subject to:
 - a right – an entitlement to something offered or available;
 - a privilege – a special benefit, exemption, or immunity;
 - a benefit – an allowance or payment to which a person is entitled;
 - an obligation – a duty, contract, or constraining power to pay or do something;
 - a penalty – a punishment or payment of a sum of money or forfeiture of property or rights;
 - a detriment – a loss, damage, or injury.

1.23. Examples might include a guideline that describes how an agency issues or reviews fines in accordance with an Act; a policy on deciding if a claimant is entitled to compensation under a scheme.

¹⁷ [Freedom of Information Act 1982 \(Vic\)](#), sections 30(2) and 32(2).

¹⁸ [Freedom of Information Act 1982 \(Vic\)](#), section 8(1)(a)(i).

Types of documents captured by section 8(1)(a)(ii)

1.24. Section 8(1)(a)(ii) requires an agency to publicly list and make available for inspection and purchase documents that meet the following three criteria:¹⁹

- The document is a manual, rule of procedure, statement of policy, record of decision, letter of advice to a person outside the agency, or a similar document containing rules, policies, guidelines, practices, or precedents; **and**
- The document is currently used by, or guides the agency or its officers:
 - to make decisions or recommendations; **or**
 - to provide advice to individuals outside the agency; **and**
- The decision, recommendation or advice is with respect to any of the following matters that a member of the public may be entitled, eligible or subject to:
 - a right – an entitlement to something offered or available;
 - a privilege – a special benefit, exemption, or immunity;
 - a benefit – an allowance or payment to which a person is entitled;
 - an obligation – a duty, contract, or constraining power to pay or do something;
 - a penalty – a punishment or payment of a sum of money or forfeiture of property or rights;
 - a detriment – a loss, damage, or injury.

1.25. Examples might include a policy that describes how an agency issues or reviews fines; a manual detailing how an agency handles complaints; a procedural manual or rules for providing grants.

Types of documents captured by section 8(1)(b)

1.26. Section 8(1)(b) requires an agency to publicly list and make available for inspection and purchase documents that meet the following three criteria:²⁰

¹⁹ [Freedom of Information Act 1982 \(Vic\)](#), section 8(1)(a)(ii).

²⁰ [Freedom of Information Act 1982 \(Vic\)](#), section 8(1)(b).

1.27. The document contains information about:

- the procedures to be employed in the enforcement of Acts or schemes; **or**
- the objectives to be pursued in the enforcement of Acts or schemes; **and**
- The document is currently used by, or guides the agency or its officers in enforcing Acts or schemes administered by the agency; **and**
- A member of the public might be directly affected by that enforcement.

1.28. Examples might include a manual detailing how a particular profession is regulated, or professional scheme administered; or a policy detailing how an agency enforces a particular statutory function.

Consequences of not publishing information required under section 8

1.29. [Section 9](#) states that no individual can suffer a detriment by virtue of not having complied with a rule, policy, guideline, or practice that was not listed or made available for inspection and purchase under section 8.

Requirement to keep information up to date

1.30. An agency is required to review its compliance with section 8 at least once every twelve months.²¹ An agency should take the most practical and efficient approach to keeping this information up to date. This may include updating or adding new rules, policies, procedures, or guidelines on a regular basis.

²¹ [Freedom of Information Act 1982 \(Vic\)](#), section 8(2)(b).

Section 9 – Unpublished documents not to prejudice public

Legislation

9 Unpublished documents not to prejudice public

Where under section 8 any agency is required to make available a document containing rule, policy, guideline or practice relating to a function of the agency and the agency fails—

- (a) to make the document available; or
- (b) to include the document in a statement required to be published under section 8—

before the time at which the person did or omitted to do any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired) that person shall not be subject to any detriment by reason only of the application of that rule, policy, guideline or practice, where with knowledge of that rule, policy, guideline or practice he could have avoided the detriment lawfully.

Guidelines

Consequences of not publishing information required under section 8

- 1.1. Section 9 states that no individual can suffer a detriment by virtue of not having complied with a rule, policy, guideline, or practice that was *not* listed or made available for inspection and purchase under section 8(2).
- 1.2. The effect of section 9 is that where an agency does not make a document falling within section 8(1) available for inspection and purchase, the agency cannot act based only on that rule, policy, guideline, or practice that is detrimental to a person, where that person claims they could have avoided the detriment if they knew about the rule, policy, guideline, or practice.
- 1.3. Consequently, an agency should ensure each document captured by section 8(1) is publicly listed (for example on a webpage) or otherwise published.
- 1.4. If a rule, policy, procedure, or practice captured by section 8(1) is not listed or published, an agency risks having to withdraw or change decisions that they make if an individual suffers a detriment because they did not know of the existence of the rule, policy, procedure, or practice.

Section 10 – Cabinet register

Legislation

10 Cabinet register

- (1) The Premier shall cause to be published on a continuing basis a register containing—
 - (a) details of the terms of all decisions made by the Cabinet after the date of commencement of this Act;
 - (b) the reference number assigned to each such decision; and
 - (c) the date on which the decision was made.
- (2) The information referred to in subsection (1) shall be entered on the register at the discretion of the Premier.

Guidelines

Requirement to publish a cabinet register

- 1.1. The Act imposes an obligation on the Premier to publish on a continuing basis, a register of cabinet decisions containing the information detailed in section 10(1)(a)-(c).
- 1.2. However, this information is entered on the register at the discretion of the Premier.
- 1.3. No register has ever been created.

Section 11 – Statement of certain documents in possession of agencies to be published

Extract of legislation

11 Statement of certain documents in possession of agencies to be published

- (1) This section applies, in respect of an agency other than a council, to any document that is—
- (a) a report, or a statement containing the advice or recommendations, of a prescribed body or organization established within the agency;
 - (b) a report, or a statement containing the advice or recommendations, of a body or organization established outside the agency by or under an Act, or by the Governor in Council or a Minister, for the purpose of submitting a report or reports, providing advice or making recommendations to the agency or to the responsible Minister of that agency;
 - (c) a report, or a statement containing the advice or recommendations, of an interdepartmental committee whose membership includes an officer of the agency;
 - (d) a report, or a statement containing the advice or recommendations, of a committee established within the agency to submit a report, provide advice or make recommendations to the responsible Minister of that agency or to another officer of the agency who is not a member of the committee;
 - (e) a report (including a report concerning the results of studies, surveys or tests) prepared for the agency by a scientific or technical expert, whether employed within the agency or not, including a report expressing the opinion of such an expert on scientific or technical matters;
 - (f) a report prepared for the agency by a consultant who was paid for preparing the report;
 - (g) a report prepared within the agency and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed government policy, programme or project;
 - (h) a report on the performance or efficiency of the agency, or of an office, division or branch of the agency, whether the report is of a general nature or concerns a particular policy, programme or project administered by the agency;
 - (i) a report containing final plans or proposals for the re-organisation of the functions of the agency, the establishment of a new policy, programme or project to be administered by the agency, or the alteration of an existing policy, programme or project administered by the agency, whether or not the plans or proposals are subject to approval by an officer of the agency, another agency, the responsible Minister of the agency or the Cabinet;

- (j) a statement prepared within the agency and containing instructions submitted to the Parliamentary Counsel for the drafting of a Bill;
 - (k) a submission prepared within the agency (other than by the responsible Minister of the agency) for presentation to the Cabinet;
 - (l) a report of a test carried out within the agency on a product for the purpose of government equipment purchasing;
 - (m) an environmental impact statement prepared within the agency; and
 - (n) a valuation report prepared for the agency by a valuer, whether or not the valuer is an officer of the agency.
- (2) The principal officer of an agency shall—
- (a) cause to be published in the prescribed form as soon as practicable after the commencement of this Part a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of Part I of this Act and are in the possession of the agency;
 - (b) within twelve months after first publication of the statement required under paragraph (a) and thereafter at intervals of twelve months, cause to be published in a prescribed form statements bringing up to date the information contained in the previous statement or statements.
- (3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt matter being disclosed.
- (4) An agency that comes into existence after the commencement of this Part shall comply—
- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the agency comes into existence and not later than twelve months after that day; and
 - (b) with the provisions of subsection (2)(b) as if the reference to "first publication" in that paragraph were a reference to first publication in compliance with this subsection.

Relevant FOI Professional Standards

Professional Standard 1.3 A principal officer must ensure information statements published in accordance with Part II of the Act are available on their agency's internet site, where one exists.

Guidelines

Purpose of section 11

- 1.1. Under section 11, an agency must publicly list reports, advice, records of decisions, valuations, scientific research, and submissions prepared by or for the agency.²² At a minimum, these documents should be listed by title, but may also list other useful descriptors such as topic and date.
- 1.2. Local councils are excluded from compliance with section 11. Whilst section 11 does not apply to councils, all councils are still under the obligation in [section 7](#) to provide a statement of the general categories of documents that are maintained in the possession of the council.²³ Additionally, councils are required to maintain a 'Public Transparency Policy' under the *Local Government Act 2020* (Vic).
- 1.3. While these documents are required to be listed, unlike [section 8](#), they are not required to be made available for inspection or purchase. Section 11 enables an individual to make a request for a listed document – whether under [section 17](#) or via other methods.
- 1.4. Where a request is received for a listed document, and the document is released in full, or in part, an agency is encouraged to publish the document on its website. This can reduce future requests for the same information and furthers the object of the Act to extend as far as possible the right of the community to access government held information.

Exempt information or documents

- 1.5. An agency is not required to list a document where listing the document would reveal exempt matter.²⁴

²² *Freedom of Information Act 1982* (Vic), section 11(2)(a).

²³ *Freedom of Information Act 1982* (Vic), section 7(1)(a)(ii).

²⁴ *Freedom of Information Act 1982* (Vic), section 11(3).

Prescribed form

- 1.6. Section 11(2)(a) requires a statement to be published ‘in the prescribed form’ detailing the documents captured by section 11. While there is no prescribed form for section 11, an agency is nevertheless obligated to implement this requirement.
- 1.7. As no form has been prescribed, there is no specific obligation to list information in one location or under specified headings – for example, the traditional ‘Statement X’. This allows for flexibility in implementing and publishing the required information.

Taking a practical approach

- 1.8. A practical approach to interpreting and implementing the requirements of section 11 should be taken. Section 11 has not undergone any significant reform since it was first enacted, and its requirements are not directly compatible with the way modern government operates.
- 1.9. Nonetheless, an agency should aim to comply with the requirements, purpose, and intent of section 11, in the context of its purpose in Part II. An agency is encouraged to consider a practical approach to publishing relevant information that takes advantage of current technology such as websites and online databases.
- 1.10. Relevant documents may be listed on a webpage or multiple logical webpages. The use of an agency website offers ease of navigation, the ability to crosslink information, and the ability to allow the public to search for, view and download documents and information on demand.

Documents required to be listed under section 11(1)(a)

- 1.11. Section 11(1)(a) requires an agency to list any document that is a report, or a statement containing the advice or recommendations, of a prescribed body or organisation established within the agency.
- 1.12. To date, no body or organisation has been prescribed for the purposes of this section. Therefore, no report or statement relating to this category is required to be listed.

Documents required to be listed under section 11(1)(b)

- 1.13. Section 11(1)(b) requires an agency to list any document that is a report, or a statement:
 - prepared by:
 - a body or organisation established outside the agency by or under an Act; **or**

- a body or organisation established outside the agency by the Governor in Council or a Minister; **and**
- it contains advice or recommendation to the agency or the responsible Minister of the agency.

Documents required to be listed under section 11(1)(c)

1.14. Section 11(1)(c) requires an agency to list any document that is a report, or a statement:

- containing advice or recommendations; **and**
- it was prepared by an interdepartmental committee; **and**
- the interdepartmental committee includes an officer of the agency.

Documents required to be listed under section 11(1)(d)

1.15. Section 11(1)(d) requires an agency to list any document that is a report, or a statement:

- prepared within the agency by a committee; **and**
- the committee was established to submit a report, provide advice, or make recommendations; **and**
- the report, advice or recommendations is directed at:
 - the responsible Minister of the agency; **or**
 - another officer of the agency not on the committee.

Documents required to be listed under section 11(1)(e)

1.16. Section 11(1)(e) requires an agency to list any document that is a report, or a statement prepared for the agency by a scientific or technical expert, whether employed within the agency or not.

1.17. It does not matter whether the expert is employed within the agency or not.

1.18. The report might relate to the results of scientific studies, surveys, or tests, but could relate to any other matter.

1.19. The report might express the opinions of the expert on scientific or technical matters.

Documents required to be listed under section 11(1)(f)

1.20. Section 11(1)(f) requires an agency to list any document that is a report prepared for the agency by a consultant who was paid for preparing the report.

Documents required to be listed under section 11(1)(g)

1.21. Section 11(1)(g) requires an agency to list any document that is a report:

- prepared within the agency; **and**
- it contains the results of studies, surveys, or tests; **and**
- the studies, surveys or tests have been carried out for the purpose of assessing or making recommendations on establishing a new or proposed government policy, program, or project.

Documents required to be listed under section 11(1)(h)

1.22. Section 11(1)(h) requires an agency to list any document that is a report:

- prepared by an agency officer or someone engaged by the agency; **and**
- it relates to the performance or efficiency of the agency, an office, division, or branch.

Documents required to be listed under section 11(1)(i)

1.23. Section 11(1)(i) requires an agency to list any document that is a report:

- containing final plans or proposals on any of the following matters:
 - the re-organisation of the functions of the agency;
 - the establishment of a new policy, program or project administered by the agency; **or**
 - the alteration of an existing policy, program or project administered by the agency.

1.24. It does not matter whether the plans or proposals are subject to final approval by an officer of the agency, another agency, the responsible Minister of the agency, or the Cabinet.

Documents required to be listed under section 11(1)(j)

1.25. Section 11(1)(j) requires an agency to list any document that is a statement:

- prepared within the agency; **and**
- it contains instructions for the drafting of a Bill; **and**
- it was submitted to the Parliamentary Counsel.

Documents required to be listed under section 11(1)(k)

1.26. Section 11(1)(k) requires an agency to list any document that is a submission prepared within the agency for presentation to the Cabinet.

1.27. It does not capture submissions prepared by the responsible Minister of the agency.

Documents required to be listed under section 11(1)(l)

1.28. Section 11(1)(l) requires an agency to list any document that is a report:

- prepared within the agency; **and**
- it relates to a test carried out on a product for the purpose of purchasing the product.

1.29. The term 'test' encompasses assessments, evaluations etc.

Documents required to be listed under section 11(1)(m)

1.30. Section 11(1)(m) requires an agency to list any document that is an environmental impact statement prepared within the agency.

Documents required to be listed under section 11(1)(n)

1.31. Section 11(1)(n) requires an agency to list any document that is a valuation report prepared for the agency by a valuer.

Requirement to keep information up to date

- 1.32. An agency is required to review its compliance with section 11 at least once every twelve months.²⁵ An agency should take the most practical and efficient approach to keeping this information up to date.

²⁵ [Freedom of Information Act 1982 \(Vic\)](#), section 11(2)(b).

Section 12 – Notices to require specification of documents in statements

Extract of legislation

12 Notices to require specification of documents in statements

- (1) A person may serve upon the principal officer of an agency, other than a council a notice in writing stating that, in the opinion of the person, a statement published by the principal officer under sections 8(2)(a) or (b) or 11(2)(a) or (b) does not specify a document as described in section 8(1) or 11(1) that was required to be specified in the statement.
- (2) The principal officer shall—
 - (a) make a decision within 21 days of receiving a notice as to whether to specify in the next statement to be published under section 8(2)(b) or section 11(2)(b), as the case may be, the document referred to in the notice; and
 - (b) cause the person to be given notice in writing of his decision.
- (3) Where the decision is adverse to the person's claim, the notice shall—
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and
 - (b) inform the person of—
 - (i) the person's right to apply to the Tribunal for review of the decision; and
 - (ii) the time within which the application for review must be made.

Guidelines

Failing to include a document as required under section 8 or 11

- 1.1. If a document is required to be made available for inspection or purchase, or publicly listed in accordance with [section 8](#) or [section 11](#), and it is not, a person is entitled under section 12 to make a request for the missing document to be made available for inspection or purchase, or publicly listed (as the case requires).
- 1.2. Under section 12, the person must notify the agency that they are of the opinion a document captured by section 8 or section 11 is not available for inspection or purchase, or publicly listed as it should be.
- 1.3. Where this occurs, the agency must respond to the person within 21 days of receiving the notice with a written decision that specifies whether the document will be included.

1.4. If the agency's decision is to not include the document, the agency must:

- give detailed reasons why the document will not be included;
- advise the person of their right to apply for a review of the decision by the Victorian Civil and Administrative Tribunal; **and**
- advise the individual that they have 60 days to apply for a review.

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