

# Office of the Regulator-General (Amendment) Bill

No.

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# LEGISLATIVE ASSEMBLY

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Read 1° 9 November 1994

*(Brought in by Mr Smith (Polwarth) and Mr Stockdale)*

## A BILL

to amend the **Office of the Regulator-General Act 1994** and for other purposes.

### **Office of the Regulator-General (Amendment) Act 1994**

**The Parliament of Victoria enacts as follows:**

#### ***1. Purpose***

The main purpose of this Act is to amend the **Office of Regulator-General Act 1994** to widen the scope of the Office's powers to obtain and distribute information, subject to specified safeguards.

#### ***2. Commencement***

This Act comes into operation on the day on which it receives the Royal Assent.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

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**3. Insertion of Part 3A**

After section 27 of the Office of the Regulator-General Act 1994 insert—

**‘PART 3A—COLLECTION AND USE OF INFORMATION**

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**27A. *General power to obtain information and documents***

(1) If the Office has reason to believe that a person has information or a document that may assist it in the performance of any of its functions, it may require the person to give it the information or a copy of the document. 10

(2) A requirement must be made in a written notice that identifies the information or document and that specifies— 15

(a) by when the requirement must be complied with; and

(b) in what form the information or copy of the document is to be given to the Office. 20

(3) The notice must also state that the requirement is made under this section and must include a copy of this Part.

(4) A person who without lawful excuse fails to comply with any requirement made under this section in a notice given to the person is guilty of an offence. 25

Penalty: 100 penalty units or imprisonment for 2 years. 30

(5) It is a lawful excuse for the purposes of sub-section (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence. 35



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- (3) The person must lodge notice of the appeal with the Office within 7 working days after the person receives written notice of the requirement.
- (4) If a person lodges an appeal against a requirement in accordance with this section, the person need not comply with the requirement until the appeal is withdrawn or dismissed. 5
- (5) On the hearing of an appeal under this section, the Office bears the onus of establishing that— 10
- (a) the decision was made in accordance with the law; and
- (b) the decision is reasonable having regarded to all relevant circumstances. 15
- (6) Section 38 applies to an appeal under this section as if—
- (a) a reference to “section 37” or “this section” was a reference to this section; and 20
- (b) a reference to a “determination” was a reference to a requirement under section 27A. 25
- (7) In addition to the power conferred on the appeal panel by section 38 (4), in granting an appeal under this section the appeal panel may cancel the requirement.
- 27c. *Restriction on disclosure of confidential information*** 30
- (1) This section applies if information or a document is given to the Office under section 27A or 32 and, at the time it is given, the person giving it states that it is of a confidential or commercially-sensitive nature. 35

(2) The Office must not disclose the information or the contents of the document to any person unless—

(a) it is of the opinion—

(i) that the disclosure of the information or document would not cause detriment to the person supplying it; or

(ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the public benefit in disclosing it outweighs that detriment; and

(b) it is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—

(i) that the disclosure of the information or document would not cause detriment to that person; or

(ii) that although the disclosure of the information or document would cause detriment to that person, the public benefit in disclosing it outweighs that detriment; and

(c) it gives the person who supplied the information or document a written notice—

(i) stating that the Office wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the

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- Office wishes to make the disclosure; and
- (ii) stating that the Office is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and 5
- (iii) setting out a copy of this section and sections 27D and 33; and 10
- (d) if it is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, it gives that other person a written notice— 15
- (i) containing the details required by paragraph (c); and 20
- (ii) stating that the Office is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion; and 25
- (e) no notice of appeal is lodged in respect of any notice given under paragraph (c) or (d) within the time permitted by section 27D (3). 25
- Penalty: 100 penalty units or imprisonment for 2 years. 30
- (3) Sub-section (2) does not prevent the Office—
- (a) from disclosing information or the contents of a document to an Associate Regulator-General, an officer or employee appointed or employed under section 20 (1), a member of staff referred to in section 35



- 20 (2) or a consultant engaged under section 21; or
- 5 (b) from using information or a document for the purposes of an inquiry; or
- (c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 33 (1A); or
- 10 (d) from supplying the information or document to the members of any appeal panel hearing an appeal in relation to the information or document.
- 15 (4) If an appeal is lodged under section 27D and the appeal—
- (a) is withdrawn or dismissed, the Office may disclose any information, or the contents of any document, that was the subject of the appeal in the manner set out in the notice given under sub-section (2) (c);
- 20 (b) is granted, the Office may disclose anything that the appeal panel permits it to disclose under section 27D (6) (b) in the manner specified by the appeal panel.
- 25 (5) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Office wishes to disclose it can not cause detriment to any person referred to in sub-section (2) (a) or (b).
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**27D. Right to appeal against a disclosure notice**

- 35 (1) A person who is given a notice under section 27C (1) (c) or (d) and who is aggrieved by a decision of the Office to

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- disclose information or the contents of a document may appeal against the decision.
- (2) An appeal may only be made on the ground that— 5
- (a) the decision was not made in accordance with the law; or
  - (b) the decision is unreasonable having regard to all relevant circumstances.
- (3) The person must lodge notice of the appeal with the Office within 7 working days after the person is given the notice. 10
- (4) On the hearing of an appeal under this section, the Office bears the onus of establishing that— 15
- (a) the decision was made in accordance with the law; and
  - (b) the decision is reasonable having regard to all relevant circumstances.
- (5) Section 38 applies to an appeal under this section as if— 20
- (a) a reference to “section 37” or “this section” was a reference to this section; and
  - (b) a reference to a “determination” was a reference to a decision under section 27C. 25
- (6) In addition to the power conferred on the appeal panel by section 38 (4), in granting an appeal under this section the appeal panel may— 30
- (a) forbid disclosure by the Office of the information or document that is the subject of the appeal; or
  - (b) restrict the intended disclosure by the Office of the information or 35

document within limits specified by the panel.

**27E. Office must not disclose exempt freedom of information documents**

- 5 (1) The Office must not disclose to any person any document that it has obtained from any agency (as defined in the **Freedom of Information Act 1982**) or Minister that is an exempt document under the **Freedom of Information Act 1982** in the hands of the agency or Minister.
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- 15 (2) Sub-section (1) does not prevent the Office from doing anything described in section 27C (3).

**27F. Annual report under this Part**

The Office must include in its annual report details of—

- 20 (a) the number of notices issued by the Office under section 27A and the general use made by the Office of the information and documents obtained as a result of those notices;
- 25 (b) the number of notices issued by the Office under sections 27C (2) (c) and (d);
- (c) the number of appeals lodged under sections 27B and 27D and the outcome of those appeals.

30 **27G. Review of this Part to be conducted**

- (1) The Minister must ensure that a review to determine—
- (a) whether there is a continued need for this Part; and

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(b) if so, whether the operation of this Part can be improved—

is conducted and completed before 1 January 1998.

- (2) The Minister must table a report of the outcome of the review in each House of Parliament within 7 sitting days of the House after the report is given to him or her.’ 5

**4. *Minor consequential amendment*** 10

Section 32 (3) of the **Office of the Regulator-General Act 1994** is repealed.

**5. *Changes concerning the publication of determinations***

- (1) For section 27 (2) of the **Office of the Regulator-General Act 1994** substitute— 15

“(2) Notice of the making of a determination must be published—

(a) in the Government Gazette; and

(b) in a daily newspaper generally circulating in Victoria. 20

- (2A) The notice must include a brief description of the nature and effect of the determination, and details of when the determination takes effect and how a copy of the determination may be obtained from the Office. 25

- (2B) The Office must send a copy of a determination—

(a) to each regulated entity in the regulated industry to which the determination applies; and 30

(b) to any person who made a submission to an inquiry to which the determination relates and who has asked for a copy of the determination.”.

- (2) In section 27 (3) of the **Office of the Regulator-General Act 1994**, for “it is” substitute “notice of its making is”.

**6. Widening of scope of protection for inquiry witnesses**

5 For section 32 (7) of the **Office of the Regulator-General Act 1994** substitute—

“(7) A person must not—

(a) threaten, intimidate or coerce another person; or

10 (b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage—

because that other person assisted, or intends to assist, any inquiry conducted by the Office.

15 Penalty: 100 penalty units or imprisonment for 2 years.”.

**7. Change concerning final reports on inquiries**

After section 33 (1) of the **Office of the Regulator-General Act 1994** insert—

20 “(1A) If, in the opinion of the Office, a final report will contain confidential or commercially-sensitive information, the Office must divide the report into the 2 following separate documents—

25 (a) a document containing the confidential or commercially-sensitive information; and

(b) a document containing the rest of the report.

30 (1B) For the purposes of sub-section (1A), any information that the Office may disclose under section 27C is not confidential or commercially-sensitive unless an appeal panel states that it is in imposing a restriction under section 27D (6) (b).

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- (1C) If the office submits a final report to the Minister in the form required by sub-section (1A), a reference to the final report in sub-sections (2), (3) and (4) is to be read as a reference to the document described in sub-section (1A) (b).”

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**8. Insertion of section 39A**

After section 39 of the **Office of the Regulator-General Act 1994** insert—

**“39A. Disclosure of information an offence**

- (1) A person must not disclose any confidential or commercially-sensitive information obtained during the course of the person’s duties under this Act. 10
- Penalty: 100 penalty units or imprisonment for 2 years. 15
- (2) A person must not use any such information to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.
- Penalty: 100 penalty units or imprisonment for 2 years. 20
- (3) However, the person may disclose or use such information if—
- (a) the disclosure or use is made in the performance of a duty under, or in connection with, this Act; or 25
- (b) the person has the consent of the person who supplied the information; or
- (c) the disclosure or use is made in legal proceedings at the direction of a court; or 30
- (d) the information is in the public domain at the time it is disclosed or used. 35

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- (4) For the purpose of removing doubt, sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.”

